THE PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT BY THE TALIBAN AS A DE FACTO AUTHORITY UNDER THE CONVENTION AGAINST TORTURE (2021–2025)

THESIS

Arranged By:

Anila Amini

Student Number: 24912108

INTERNATIONAL PROGRAM

MASTER'S PROGRAM IN LAW

FACULTY OF LAW

UNIVERSITAS ISLAM INDONESIA

YOGYAKARTA

2026

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PAGE OF APPROVAL

بسم الله الرحمن الرحيم

Prohibition of Torture and Inhuman Punishments under Taliban Rule under International Human Rights Law

Telah diperiksa dan disetujui Dosen Pembimbing Tugas Akhir untuk diajukan
ke depan TIM Penguji dalam Ujian Tugas Akhir / Pendadaran
pada tanggal 27 Agustus 2026

Yogyakarta, 27 Agustus 2026
Dosen Pembimbing Tugas Akhir,

Dodik Setiawan Nur Heriyanto,
S.H., M.H., LL.M., Ph.D.,

بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ

Prohibition of Torture and Inhuman Punishments under Taliban Rule under International Human Rights Law

Telah Dipertahankan di Hadapan Tim Penguji dalam
Ujian Tugas Akhir / Pendadaran
pada tanggal dan Dinyatakan LULUS

Yogyakarta, 27 Agustus 2026

Tim Penguji		Tanda Tangan
1. Ketua	Dodik Setiawan Nur Heriyanto, S.H., M.H., LL.M., Ph.D.,	
2. Anggota	Sefriani, Prof., Dr., S.H., M.Hum.,	
3. Anggota	Dr. Eko Riyadi, S.H., M.H.,	

Mengetahui:
Universitas Islam Indonesia
Fakultas Hukum
Dekan,

Agus Triyanta, Drs., M.A., M.H., Ph.D.,
NIK. 934100105

II

MOTTO

"One child, one teacher, one book, one pen can change the world."

(Malai Yousafzai)

(QS. Al- 'Alaq 96:1)

"Read in the name of your Lord who created
Created man from a clinging substance.
Read, and your Lord is the Most Generous."

Imam Al-Ghazali (RA)

"Education is not the filling of a vessel, but the lighting of a lamp."

Martin Luther King Jr.

"The function of education is to teach one to think intensively and to think critically."

DEDICATION

Allah SWT,

Who consistently listens to and grants my prayers,

Myself,

Never give up, and start with the belief to work for education in Afghanistan

My Beloved Parents,

For your endless prayers, sacrifices, and unconditional love, which became the foundation for every step I take.

My Lovely Siblings,

For your constant encouragement and for always believing in me, even in moments when I doubted myself.

My Dearest Relatives,

For exceptional motivation and support, especially my dear Uncle

My supervisor,

For your invaluable guidance, patience, and academic insight that shaped this thesis into what it is today.

STATEMENT LETTER

DECLARATION OF ORIGINALITY OF SCIENTIFIC WORK

(FINAL THESIS)

STUDENT OF THE FACULTY OF LAW, ISLAMIC UNIVERSITY OF INDONESIA

بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ

"I, the undersigned:"

Name : **Anila Amini**

NIM : **24912108**

hereby declare that I am a student of the Faculty of Law, Universitas Islam Indonesia, and that I have prepared and submitted my thesis under the following title: **"The Prohibition of Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment by The Taliban as a De Facto Authority Under The Convention Against Torture (2021–2025)"**

I submit this thesis to the Board of Examiners in the final examination conducted by the Faculty of Law, Universitas Islam Indonesia.

In relation to the above, I hereby declare that:

1. This scientific work is entirely the result of my own work and research, and in the process of writing it, I have complied with all applicable rules, ethical principles, and academic norms governing the preparation of scholarly works in accordance with prevailing regulations and standards.
2. I affirm that this scientific work is wholly original and does not contain any form of plagiarism.

3. Although, in principle, the ownership of this scientific work belongs to me, for academic purposes and its further development, I grant permission to the Law Library of Universitas Islam Indonesia and the libraries within Universitas Islam Indonesia to use this scientific work in a reasonable manner and for non-commercial purposes.
4. In addition to the foregoing, particularly the statements set forth in paragraphs 1 and 2, I declare that I am prepared to accept any administrative, academic, or even criminal sanctions if it is conclusively and convincingly proven that I have committed scientific misconduct that contradicts the aforementioned statements.

   I further agree to cooperate fully in any proceedings by appearing when required, providing clarification, presenting evidence, defending my rights and obligations, and signing any official minutes related thereto before the Committee of the Faculty of Law, Universitas Islam Indonesia, as appointed by the Dean of the Faculty, should any indication or allegation of plagiarism in this scientific work be identified or reported by the Faculty of Law, Universitas Islam Indonesia.

I hereby make and sign this statement truthfully, in sound physical and mental condition, with full awareness, and without any pressure from any person or institution.

Yogyakarta, August 13th, 2026

The Declarant, Signature



Anila Amini

Student Number: 24912108

ACKNOWLEDGEMENT

Assalamu'alaikum Wr. Wb.

Alhamdulillahirabbil'alaaamiin

In the name of Allah, the Most Gracious, the Most Merciful

All praise be to Allah, Lord of the Universe; there is no God but Him.

The author would like to express sincere gratitude to all individuals and institutions whose support and guidance contributed to the completion of this thesis. Finally, this research is presented as reliable scientific work and aims to contribute to the academic discourse on international human rights. This research examines the violation …. First and foremost, the author extends profound appreciation to:

1. The author expresses sincere gratitude to Prof. Dr. Ir. Hari Purnomo, M.T., IPU., ASEAN Eng., Rector of Universitas Islam Indonesia, for his leadership and dedication to academic excellence.
2. Deep appreciation is extended to Drs. Agus Triyanta, M.A., M.H., Ph.D., Dean of the Faculty of Law, Universitas Islam Indonesia, for his continuous support and encouragement.
3. Sincere thanks are conveyed to Prof. Dr. Sefriani, S.H., M.Hum., Head of the Study Program, Faculty of Law, Universitas Islam Indonesia, for his academic guidance and encouragement.
4. The author gratefully acknowledges Dr. Idul Rishan, S.H., LL.M., Secretary of Master and Doctoral Program in Law, Faculty of Law, Universitas Islam Indonesia, for her invaluable assistance and administrative support throughout the study period.
5. The author expresses the deepest gratitude to Prof. Dodik Setiawan, S.H., M.H., LL.M., Ph.D., as the supervisor of this thesis, for his patience, dedication, insightful guidance, constructive feedback, and continuous support throughout the research and writing process.

6. The author sincerely thanks Dr. Eko Riyadi, S.H., M.H. and Prof. Dr. Sefriani, S.H., M.Hum., as the examiners of this thesis, for their valuable comments, scholarly insights, and guidance that significantly improved the quality of this work.
7. Appreciation is extended to all respected faculty members of the Faculty of Law, Universitas Islam Indonesia, whose knowledge, perspectives, and academic contributions greatly enriched the author's studies.
8. Special appreciation is expressed to Dr. Eko Riyadi, S.H., M.H., whose continuous encouragement, thoughtful advice, and unwavering support served as both motivation and emotional strength throughout the completion of this thesis.
9. Finally, the author expresses gratitude to all individuals who contributed to her academic and personal growth within the Universitas Islam Indonesia community, even if they cannot be mentioned individually.
10. This thesis is not without limitations, and the author sincerely welcomes constructive criticism and suggestions for future improvement. It is hoped that this research will contribute meaningfully to the development of legal scholarship, particularly in international law.
11. Lastly, I would like to thank my parents, my friends, and my colleagues for their endless moral support and help. I simply couldn't have done this without them.

Wassalamu'alaikum warahmatullahi wabarakatuh.

Yogyakarta, August 8th, 2026
The Declarant, Signature

Anila Amini
Student Number: 24912108

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ABSTRACT

This study examines the conduct and practices of the Taliban in Afghanistan between 2021 and 2025 under the Convention against Torture (CAT). The main purpose of the study is to examine whether the actions of the Taliban meet the legal elements of torture under Article 1 or constitute cruel, inhuman, or degrading treatment or punishment under Article 16 of the Convention. It also examines whether Taliban members and officials who perform governmental functions can be considered "persons acting in an official capacity" under Article 1 of Cat.

The study uses a normative legal research method and examines the Convention against Torture, other international human rights instruments, and reports published by the United Nations and independent human rights organizations through legal, conceptual, and historical approaches.

The findings show that since August 2021, the Taliban have exercised effective control over Afghanistan's territory, population, and government institutions and have therefore acted in practice as a de facto authority. Evidence also indicates that some documented practices, including arbitrary detention, coercive interrogations, forced confessions, corporal punishment, and mistreatment of detainees, may fall within the scope of torture or other cruel, inhuman, or degrading treatment or punishment.

The study further finds that Afghanistan's obligations under the Convention against Torture have not ended with the change of government. Taliban members and officials who perform governmental functions may, based on their roles and official functions, fall within the concept of "persons acting in an official capacity" under Article 1 of the Convention. In addition, Articles 5 and 7 provide, under certain conditions, a basis for exercising criminal jurisdiction over persons accused of torture.

Finally, the study concludes that some of the documented acts committed by the Taliban between 2021 and 2025 may contain the legal elements of torture under Article 1 of the Convention, while other acts may fall within the scope of Article 16.

Keywords: *torture; cruel, inhuman or degrading treatment; Convention against Torture; de facto authority; official capacity; universal juresdaction; Afghanistan; Taliban.*

CHAPTER I
INTRODUCTION

1.1. Background of Study

After the fall of the Islamic Republic of Afghanistan on August 15, 2021, and the simultaneous withdrawal of NATO and American forces, the Taliban seized complete control of the nation through military power without following any legal or democratic procedures.[1] The group promptly dismantled the previous government's legal framework and suspended the 2004 Constitution.[2] With the Taliban's return to power, Afghanistan entered a critical phase, a period during which all legal institutions and the formal justice system gave way to a Sharia-based authority characterized by a strict and authoritarian interpretation of Islamic law.[3]

During this period, numerous reports from institutions such as the United Nations Assistance Mission in Afghanistan (UNAMA), [4] Human Rights Watch, and Amnesty International revealed widespread cases of torture, arbitrary detention, extrajudicial killings, and public punishments such as flogging, amputation, and execution.[5] These reports indicate that the Taliban's human rights violations are not isolated or spontaneous incidents, but rather part of an organized and deliberate system of control.[6] The group's actions are rooted in a coherent political and ideological framework aimed at suppressing opposition and silencing dissent.[7] From restrictions imposed on women and civil society activists to arbitrary detentions,

[1] Freedom House, "Afghanistan: Freedom in the World 2024 Country Report," accessed July 21, 2025, https://freedomhouse.org/country/afghanistan/freedom-world/2024.

[2] Aminesty International, Death in Slow Motion: Women and Girls under Taliban Rule" (London: Amnesty International, July 27, 2022), accessed July 22, 2025,https://www.amnesty.org/en/documents/asa11/5685/2022/en/.

[3] United Nations Assistance Mission in Afghanistan (UNAMA) – Human Rights Service, *The Treatment of Detainees in Afghanistan – Respecting Human Rights: A Factor for Trust OHCHR +2 UNAMA +2* (Kabul / Geneva: UNAMA, 2023) , pp. 12–19.https://unama.unmissions.org/sites/default/files/unama_report_-_eng_-_treatment_of_detainees_sept_23_0.pdf?.

[4] UNAMA, Treatment of Detainees in Afghanistan (2023), pp. 12–19

[5] Human Rights Watch, "Afghanistan: Events of 2023," in *World Report 2024* (2024), https://www.hrw.org/world-report/2024/country-chapters/afghanistan.

[6] Human Rights Watch, "Afghanistan" (2024).

[7] "Afghanistan: Death in Slow Motion: Women and Girls under Taliban Rule," *Amnesty International*, July 27, 2022, https://www.amnesty.org/en/documents/asa11/5685/2022/en/.

torture, rape, and public punishments such as *qisas* and stoning, all these measures illustrate how the Taliban use violence and fear to consolidate power and eliminate alternative voices.[8]

Furthermore, during detention, individuals have been subjected to various forms of torture, ranging from whipping and electric shocks to sleep deprivation, hanging from ceilings, rape, and severe beatings.[9] According to Human Rights Watch, these methods are systematically used to force detainees into submission and to extract confessions under duress. Consequently, the nature of these detentions reflects not a lawful justice system but one built on coercion, intimidation, and impunity. Reports by the United Nations Human Rights Council have classified these practices as serious violations of fundamental human rights and clear breaches of international law.[10]In addition, public punishments such as flogging, amputation, and stoning carried out in public squares serve as visible demonstrations of coercive authority and deliberate attempts to degrade human dignity.[11] These punishments are imposed without legal representation, due process, or a fair trial. According to Amnesty International, such measures constitute cruel, inhuman, and degrading treatment and are in clear violation of international human rights instruments, including Article 5 of the Universal Declaration of Human Rights.[12]

According to Article 1 of the Convention against Torture, "torture" means the intentional infliction of severe physical or mental pain or suffering for such purposes as obtaining a confession, punishment, intimidation, or discrimination, when committed by or

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[8] Human Rights Watch, "Afghanistan: Events of 2022," in *World Report 2023* (2023), https://www.hrw.org/world-report/2023/country-chapters/afghanistan.

[9] *Afghanistan: Women Protesters Detail Taliban Abuse | Human Rights Watch*, October 20, 2022, https://www.hrw.org/news/2022/10/20/afghanistan-women-protesters-detail-taliban-abuse.

[10] "A/HRC/51/6: Situation of Human Rights in Afghanistan - Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan," OHCHR, accessed October 15, 2025, https://www.ohchr.org/en/documents/country-reports/ahrc516-situation-human-rights-afghanistan-report-special-rapporteur.

[11] *Corporal Punishment on the Rise in Afghanistan | Human Rights Watch*, May 8, 2023, https://www.hrw.org/news/2023/05/08/corporal-punishment-rise-afghanistan.

[12] "Afghanistan: Taliban's Cruel Return to Hardline Practices with Public Floggings Must Be Halted Immediately," *Amnesty International*, November 24, 2022, https://www.amnesty.org/en/latest/news/2022/11/afghanistan-talibans-cruel-return-to-hardline-practices-with-public-floggings-need-to-be-halted-immediately/.

with the consent or acquiescence of public officials or persons acting in positions of authority.[13] In light of this definition, the Taliban's actions since 2021 clearly fall within the scope of torture and inhuman punishment. By dismantling all legal structures and abolishing the Constitution the foundation of Afghanistan's legal system — the Taliban established a governance model grounded in a rigid and personal interpretation of Sharia law. Such a framework operates beyond the scope of legal sanction and enables systematic violence, corporal punishment, and inhuman treatment without oversight or accountability.[14]

However, the response of international institutions to acts of torture and other cruel, inhuman or degrading treatment or punishment in Afghanistan remains largely limited. While documenting violations is necessary, it is insufficient to ensure accountability.[15] The core issue lies in the persistent gap between the realities on the ground and the legal mechanisms available to address such violations.[16] Although the prohibition of torture is recognized as a peremptory norm of international law and is firmly established under the Convention against Torture, significant challenges remain in holding those responsible for committing or ordering such acts accountable. While international bodies such as UNAMA, OHCHR and the Human Rights Council have repeatedly documented and condemned these violations.[17]

Since August 2021, the Taliban has exercised effective control over Afghanistan's territory, population, government institutions, security forces, and judicial system. Although

[13] United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) Art. 1.

[14] United Nations Human Rights Council (Report by Richard Bennett), "Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan," Publisher United Nations, March 9, 2023.

[15] United Nations Assistance Mission in Afghanistan (UNAMA), Human Rights Situation in Afghanistan: February–April 2023 (Kabul: UNAMA, 2023), documenting continuing human rights violations and the need for accountability mechanisms.

[16] Office of the United Nations High Commissioner for Human Rights (OHCHR), Situation of Human Rights in Afghanistan, Report of the United Nations High Commissioner for Human Rights, A/HRC/51/6 (2022), noting the absence of effective national mechanisms capable of addressing the scale of human rights violations and ensuring accountability.

[17] Human Rights Council, Situation of Human Rights in Afghanistan, A/HRC/RES/48/1 (7 October 2021), emphasizing the need to promote and protect human rights in Afghanistan and to address violations through appropriate mechanisms.

the Taliban has not been recognized by a significant part of the international community as the legitimate government of Afghanistan, it has, in practice, taken over many governmental functions and powers that are normally exercised by state authorities.[18] This situation raises important legal questions regarding the applicability of international human rights obligations, particularly those under the Convention against Torture, to individuals acting under the authority of a de facto governing power.[19]

One of the most important legal issues in this context is the interpretation of the phrase "public officials or other persons acting in an official capacity" under Article 1 of the Convention against Torture.[20] Although the Convention was originally designed to regulate the conduct of state officials, contemporary international human rights practice has increasingly recognized that individuals who effectively exercise governmental functions and have actual control over a country's territory and population may fall within this concept.[21] Therefore, the status of the Taliban as a de facto governing authority raises the question of whether its members can be considered persons acting in an official capacity and, consequently, whether they may bear legal responsibility for acts of torture and other cruel, inhuman, or degrading treatment or punishment.[22]

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[18] OHCHR, The Situation of Human Rights in Afghanistan, Report of the Special Rapporteur on the situation of human rights in Afghanistan, documenting the exercise of governmental authority by the Taliban following the takeover of August 2021.

[19] United Nations Committee against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, CAT/C/GC/2, 24 January 2008, paras. 7 and 18, recognizing that obligations under the Convention apply to persons exercising de facto or de jure control and to public authorities and other persons acting in an official capacity.

[20] OHCHR, Three Years of Taliban Rule: Human Rights Situation in Afghanistan, Joint Statement by the United Nations Special Rapporteur on the Situation of Human Rights in Afghanistan and other United Nations experts, 14 August 2024, recognizing the continuing exercise of authority by the Taliban as de facto authorities and emphasizing the applicability of international human rights obligations.

[21] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 U.N.T.S. 85, Art. 1.

[22] United Nations Office of the High Commissioner for Human Rights, Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies, recognizing that the phrase "other person acting in an official capacity" may encompass de facto authorities exercising powers comparable to those normally exercised by legitimate governments.

As a result, important legal questions arise as to whether the Taliban, as a de facto governing authority exercising governmental functions in Afghanistan, falls within the scope of the Convention against Torture; whether its members can be considered “persons acting in an official capacity” within the meaning of Article 1 of the Convention; and whether Taliban members and officials can be held legally responsible for acts of torture and other cruel, inhuman, or degrading treatment or punishment committed between 2021 and 2025. Therefore, this research examines the acts attributed to the Taliban during this period and assesses their conformity with the legal elements of torture and other cruel, inhuman, or degrading treatment or punishment. It also analyzes the legal basis for the responsibility of Taliban members and officials under the Convention against Torture and international human rights law.

1.2 Problem Formulation

a. To what extent the Taliban engage in torture and inhuman treatment or punishment during their rule in between 2021 to 2025 in Afghanistan?

b. Do Taliban members exercising governmental functions qualify as persons “acting in an official capacity” within the meaning of Article 1 of the Convention?

1.3 Research Objectives

a. To analyze to what extent the Taliban engage in torture and inhuman treatment or punishment during their rule in between 2021 to 2025 in Afghanistan;
b. To analyze whether Taliban members exercising governmental functions qualify as persons “acting in an official capacity” within the meaning of Article 1 of the Convention.

1.4 Originality of the Research

No	Sources	Discussion	Differences
1.	**Andrew Clapham** – *Human Rights Obligations of Non-State Actors (OUP 2006)*	The article analyzes human rights obligations of non-state actors in armed conflict and challenges the traditional state-centric approach of international human rights law.	This research moves beyond the general discussion of non-state actors by examining the legal responsibility of individual Taliban members and officials for acts of torture and other cruel, inhuman or degrading treatment or punishment under the Convention against Torture.
2.	**Erika de Wet** – *Torture as Jus Cogens*	The article discusses the prohibition of torture as a peremptory norm *jus cogens* and its legal consequences, including the invalidity of conflicting justifications.	This research applies the *jus cogens* nature of the prohibition of torture to assess the legal responsibility of Taliban members and officials and to reject religious or political justifications for acts of torture committed between 2021 and 2025.
3.	**Ginevra Le Moli** – *Torture by Non-State Actors: Four Inquiries (2021) 19(2) JICJ 363*	The study discusses torture committed by non-state actors and the challenges of attribution and responsibility under international law.	This research applies these discussions specifically to Taliban practices and evaluates the legal responsibility of individual Taliban members and officials involved in acts of torture and inhuman punishment.
4.	**Bellal, Giacca & Casey-Maslen** – *Armed Non-State Actors and Torture*	The work examines the prohibition of torture and the obligations of armed non-state actors under international law.	This research focuses specifically on Taliban members and officials and examines their legal responsibility for torture and other prohibited acts under the Convention against Torture.
5.	**Manfred Nowak** – *What Practices Constitute Torture?*	The article provides a detailed interpretation of the elements of torture under international	This research applies these legal criteria to documented Taliban practices between 2021

No	Sources	Discussion	Differences
	US and UN Standards	human rights law, focusing on severity, intent, and purpose.	and 2025 to determine whether they constitute torture or other prohibited treatment under the Convention against Torture.
6.	**Werle & Jessberger** – *Principles of International Criminal Law*	The book explains concepts of individual responsibility, participation, superior responsibility, and attribution under international law.	This research uses these principles only to support the analysis of individual responsibility under Articles 2, 4, 5 and 7 of the Convention against Torture and does not focus on international criminal prosecution.
7.	**Hakimi** – *The ICC and the Afghan Dilemma*	The article discusses the legal obligations and responsibility of armed groups operating in Afghanistan and the challenges of accountability.	This research builds upon the concept of effective control by specifically examining whether Taliban members exercising governmental functions may be regarded as persons acting in an official capacity under Article 1 of the Convention against Torture and whether they may incur individual responsibility for acts of torture and ill-treatment committed between 2021 and 2025
8.	**Nowak & McArthur** – *The United Nations Convention Against Torture: A Commentary (2008)*	The commentary provides an authoritative interpretation of Article 1 CAT and the legal obligations arising from the prohibition of torture.	This research utilizes the CAT framework to evaluate Taliban conduct and determine the legal responsibility of individual Taliban members and officials for violations of the Convention.

A review of previous studies shows that much of the existing literature has focused on the general prohibition of torture under international law and the human rights obligations

of states and non-state actors. Although these studies have provided important information about the legal framework concerning torture and other cruel, inhuman, or degrading treatment or punishment, limited attention has been given to the legal responsibility of individual members and officials of de facto authorities, particularly in the context of Afghanistan under Taliban rule. Therefore, the relationship between documented acts of torture and the application of the Convention against Torture to Taliban members and officials remains insufficiently examined.

First, unlike previous studies that mainly discuss torture from a general or theoretical perspective, this research focuses on the Taliban's rule in Afghanistan between 2021 and 2025. It examines practices such as arbitrary detention, coercive interrogation, corporal punishment, and forced confessions to determine whether they may constitute torture or other prohibited forms of ill-treatment under the Convention against Torture.

Second, this research focuses on the responsibility of individual Taliban members and officials rather than only examining the actions of the Taliban as an institution. It considers individuals who may have committed, ordered, authorized, facilitated, or participated in acts of torture or other inhuman treatment.

Third, this study examines the legal importance of the Taliban's exercise of governmental functions under Article 1 of the Convention against Torture. Although the Taliban have not been widely recognized as the lawful government of Afghanistan, they have exercised effective control over the country and established administrative, security, intelligence, and detention structures since August 2021. Therefore, this research considers whether Taliban members and officials working within these structures may be regarded as "public officials or other persons acting in an official capacity" under Article 1 of the Convention.

Finally, the research considers the relevance of Articles 2, 4, 5, and 7 of the Convention, particularly regarding the prevention of torture, jurisdiction, and the prosecution or extradition of alleged perpetrators. In this way, the study applies the legal standards of the Convention to documented practices between 2021 and 2025 and assesses whether Taliban members exercising governmental functions may be legally responsible when the required elements of torture or other prohibited ill-treatment are established.

1.5 Term and Definition

The goal of defining terms in this study is to avoid misunderstandings, double interpretations, and ambiguities in key concepts related to the research title. Because the subject of this research is "Prohibition of Torture and Inhumane Punishments during the Taliban Rule under International Human Rights Law," a precise explanation of the main terms is critical for the study's unity of meaning, coherence of argument, and clarity of conceptual framework. As a result, this section defines the following terms precisely and legally.

a. Torture

"Torture" refers to the deliberate infliction of extreme pain or suffering, either physical or mental, on an individual for goals such as coercing a confession, punishment, intimidation, or discrimination, whether the act is carried out by or based just on suspicion. When these acts are carried out by or with the approval or complicity of public authorities or those in positions of power or authority, they are considered torture.[23]

b. Inhuman treatment and punishment

The prohibition of torture, inhuman treatment, and inhuman punishments includes any act that causes humiliation, and this is a mandatory rule and no circumstances can be suspended, and it includes all types of flogging, amputation, stoning, insults, and behavior that is contrary to human dignity.[24]

c. Jus cogens

Because of its jus cogens nature, actors who exercise effective control over territory without formal international legitimacy are still obligated to abide by this rule. At the time of its conclusion, any treaty that contravenes a peremptory rule of general international law

[23] CAT Convention, Art. 1 (1984).

[24] "ICCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) | Refworld," accessed October 15, 2025, https://www.refworld.org/legal/general/hrc/1992/en/11086?.

(jus cogens) is void.[25] According to the Vienna Convention, a peremptory norm of general international law is one that is acknowledged and accepted by the international community of states as one from which no deviation is allowed and that can only be altered by a later norm of the same kind. Part V, Section 3 on the suspension and termination of treaty operations reflects this stance.[26]

d. Taliban Regime

The de facto authority that seized power in Afghanistan on August 15, 2021, when the Islamic Republic collapsed, is referred to as the "Taliban regime." The Taliban maintains effective territorial control, manages institutions, upholds the law, and makes arrests, detentions, and punishments while not having international recognition as a legitimate government.[27]

1.6 Literature Review

The author will examine the legal thresholds set by the Convention against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR), customary international law, and relevant international jurisprudence to determine whether the acts committed under the Taliban regime between 2021 and 2025 constitute torture and cruel, inhuman, or degrading treatment or punishment (CIDT). Furthermore, this research will examine the de facto authority status of the Taliban and assess whether international criminal law and human rights legislation apply to individual culpability of Taliban leaders and members.

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[25] United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 U.N.T.S.
[26] Ibid.
[27] OHCHR, *Situation of Human Rights in Afghanistan*, A/HRC/51/6.

a. Concept and Legal Framework of Torture and Inhuman Punishment under International Human Rights Law

Torture, inhuman punishment and degrading and inhuman treatment are prohibited in international human rights law, and important instruments such as Article 7 of the International Covenant on Civil and Political Rights[28] and Article 5 of the Universal Declaration of Human Rights[29] prohibit such inhuman treatment and punishment, which are contrary to human dignity. Article 1 of the Convention against Torture (CAT) prohibits any severe physical or mental pain inflicted for the purpose of obtaining a confession or punishment,[30] and Article 16 of the CAT obliges States to prevent all cruel, inhuman or degrading treatment.[31] These cases demonstrate the concern of international human rights law for human dignity; in the sense that anything that conflicts with human dignity—whether torture or inhuman treatment—is prohibited.

Although torture and inhuman treatment differ in the severity of suffering, both violate human dignity. Torture involves the infliction of severe pain for a specific purpose, while inhuman treatment is less severe. However, because of its inhuman and degrading nature, it is still absolutely prohibited.[32] In fact, the difference between the two is in the "severity of suffering and the degree of pain" and not in the nature of the violation.[33] For example, in the case of Tyrer v. UK, the European Court of Human Rights considered flogging of young people to be inhuman punishment because its purpose was to violate the human dignity of individuals.[34]

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[28] ICCPR, art. 7
[29] UDHR, art. 5
[30] CAT, art. 1
[31] CAT, art. 16.
[32] Council of Europe. *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Rome: Council of Europe, 4 November 1950, art. 3.
[33] European Court of Human Rights. *Ireland v. the United Kingdom*. Application No. 5310/71. Judgment of 18 January 1978, para. 167. P.54-55.Strasbourg: Council of Europe.
[34] European Court of Human Rights, *Tyrer v. the United Kingdom*, Application No. 5856/72, Judgment of 25 April 1978, paras. 29–33,p.11-13. (Strasbourg: Council of Europe

Torture and inhuman punishment are absolute and non-derogable prohibitions according to Article 7 of the Civil and Political Covenant,[35] as well as General Comment No. 20 of the UN Human Rights Committee.[36] Within this framework, the behavior of the Taliban can also be examined. Independent reports show that the Taliban have committed various types of torture and inhumane treatment in recent years. [37]

According to analyses, the behavior of the Taliban is not only an example of torture, but many of the punishments they apply under the guise of "sharia" and "morality" also fall into the category of inhumane punishment.[38] The Taliban seized complete control of the nation through military power without following any legal or democratic procedures after the Islamic Republic of Afghanistan fell apart on August 15, 2021, and NATO and American soldiers withdrew at the same time. [39] This group promptly dismantled the previous government's legal framework and suspended the 2004 constitution.[40] After the Islamic Emirate suppressed girls from attending school, suppressed the media, and closed civic institutions, as a result of its lack of legal and public legitimacy.[41]

Assessments of the Taliban's human rights record, particularly in the area of torture and inhumane treatment, indicate that these actions are not the result of individual behavior or random incidents, but rather the result of a planned and structured pattern.[42] The Taliban's actions are not separate from politics and purpose; rather, they follow a set of systematic

[35] ICCPR, art. 7

[36] HRC, *General Comment No. 20*

[37] UNAMA, *Annual Report*, 2023

[38] Amnesty International, *Taliban's War on Human Rights*, 2022

[39] Freedom House, "Afghanistan: Freedom in the World 2024 Country Report," accessed July 21, 2025, https://freedomhouse.org/country/afghanistan/freedom-world/2024.

[40] Aminesty International, Death in Slow Motion: Women and Girls under Taliban Rule" (London: Amnesty International, July 27, 2022), accessed July 22, 2025,https://www.amnesty.org/en/documents/asa11/5685/2022/en/.

[41] Human Rights Watch, "Afghanistan: Events of 2024," in *World Report 2025* (New York: Human Rights Watch, 2024), accessed July 22, 2025, https://www.hrw.org/world-report/2025/country-chapters/afghanistan.

[42] UNAMA, Human Rights in Afghanistan (2022)pp. 12–15

goals, policies, and structures that are used to suppress and silence society.[43] From restrictions on civil society activists and women to arbitrary detentions, murder, torture, rape, and even the implementation of public punishments such as qisas and stoning, all reflect the Taliban's efforts to consolidate power through fear and the elimination of any dissenting voice.[44]

The restriction and elimination of civil society activists is one of the main tools of the Taliban's repression against society.[45] One of the most prominent examples of this repression is the detention of women protesters, whose fate and numbers were unknown for weeks.[46] These arrests were carried out without any judicial order or court ruling. The aim of such measures was to create fear and anxiety among the protesting women and suppress their right to peaceful assembly and freedom of expression, so that women were placed in an atmosphere of insecurity and caught in a cycle of continuous intimidation.[47]

During detention, individuals have been subjected to various forms of torture, from whipping and electric shocks to sleep deprivation, hanging from ceilings, murder, rape, and severe beatings. According to Human Rights Watch,[48] these methods are used to force detainees to obey and make forced confessions. Therefore, this situation is not simply a simple detention, but rather reflects a structure lacking the rule of law. From a torture perspective, this has been documented in the Human Rights Council reports as an example of a serious violation of fundamental human rights.[49]

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[43] "Afghanistan: Death in Slow Motion: Women and Girls under Taliban Rule," *Amnesty International*, July 27, 2022, https://www.amnesty.org/en/documents/asa11/5685/2022/en/.

[44] Human Rights Watch, "Afghanistan: Events of 2022," in *World Report 2023*, https://www.hrw.org/world-report/2023/country-chapters/afghanistan.

[45] Amnesty International, Death in Slow Motion

[46] OHCHR, "A/HRC/51/6."

[47] Human Rights Watch, "Afghanistan" (2023).

[48] *Afghanistan*, October 20, 2022.

[49] A/HRC/51/6, Situation of Human Rights in Afghanistan

Public punishments such as flogging, amputation and stoning in public squares are a display of power and a humiliation of the social conscience of the human being.[50] These measures are carried out without any legal process, the presence of a lawyer or a fair trial. According to Amnesty International, these types of punishments constitute cruel and degrading treatment and are in clear violation of civil and political rights, as well as Article 5 of the Universal Declaration of Human Rights.[51]

Analysis and assessment of torture patterns show that the Taliban, as rulers with practical control over the territory, have not only committed violations of fundamental human rights, but also use torture as a violent tool to suppress, intimidate and consolidate their rule.[52] These tortures, from the stage of detention to the execution of public punishments, demonstrate that the Taliban's behavior is not a random or individual act, but a conscious and purposeful policy to effectively control the population. Accordingly, it is necessary to examine whether individual Taliban members and officials who committed, ordered, authorized, or facilitated such acts may incur legal responsibility under international law.[53]

b. The Prohibition of Torture and Inhuman Punishment as Peremptory Norms of International Law

A peremptory norm is a set of principles and norms that are inviolable and without exception, accepted by the entire international community, and anything that contradicts it is rejected and rejected. According to Article 53 of the Vienna Convention, any article or

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[50] *Corporal Punishment on the Rise in Afghanistan | Human Rights Watch*.

[51] "2021-Torture-Public-Report.Pdf," n.d., accessed October 15, 2025, https://www.ohchr.org/sites/default/files/Documents/Countries/AF/2021report/2021-Torture-Public-Report.pdf?.and see also [51] "Afghanistan," November 24, 2022.

[52] Office of the United Nations High Commissioner for Human Rights (OHCHR), *Afghanistan: National Report Submitted to the Universal Periodic Review (UPR)* (United Nations Human Rights Council (OHCHR), 2022), 11–17.

[53] Amnesty International, *The Rule of Taliban: A Year of Violence, Impunity and False Promises* (Amnesty International, 2022), 12–20, https://www.amnesty.org/en/wp-content/uploads/2022/08/ASA1159142022ENGLISH.pdf?.

agreement that contradicts peremptory norms is null and void.[54] Torture is also included in these rules.[55] The works of researchers such as Antonio Cassese, Erika de Wet, M. Nowak, Dinstein and Waldron show that the absolute prohibition of torture and inhuman punishment is not only contractual, but also has customary and peremptory roots, and no religious, religious or cultural reason or justification for violating it is accepted.[56]

In light of these cases, it can be said that the actions of the Taliban have serious legal consequences, because the justifications they offer for inhumane behavior, punishments and torture under the guise of Sharia, custom or maintaining order and establishing security are not accepted by international law.[57] Furthermore, because of the peremptory nature of this prohibition, the Taliban's behavior can be subject to global jurisdiction and prosecuted in countries that are not even members of the International Criminal Court,[58] because the torture and behavior carried out by the Taliban contradicts the peremptory norm of human dignity and customary international law, and creates individual and collective responsibility for them.[59]

According to the peremptory norms and the Syracuse Principles,the prohibition of torture does not admit of any exceptional circumstances—whether war, crisis, or religious necessity and cannot be subject to legal derogation or justification under any circumstances.[60] However, the Taliban, by misinterpreting Sharia, ignore these principles and refuse to be held accountable, justifying all these acts under the guise of religion.[61]

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[54] Vienna Convention, Art. 53

[55] CAT Committee, *General Comment No. 2*

[56] Erika de Wet, *The Prohibition of Torture as an International Norm of jus cogens and Its Implications for National and Customary Law*, 15 European Journal of International Law 97 (2004): 97-105

[57] Antonio Cassese, *International Law*, 2nd ed. (Oxford: Oxford University Press, 2005), 383–38

[58] International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment of 20 July 2012, paras. 99–101.

[59] De Wet, "Prohibition of Torture," 112.

[60]United Nations / International Commission of Jurists, "The Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR," United Nations, 1948, 3-5, https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf?.

[61] International Commission of Jurists (ICJ) and Amnesty International, *The Taliban's War on Women: The Crime against Humanity of Gender Persecution in Afghanistan* (International Commission of Jurists (ICJ)

This situation has created a deep gap between human dignity and the principle of the prohibition of torture, in the relationship between executive power and international responsibilities. The Taliban are neither recognized as a legitimate government nor do they consider themselves bound by domestic or international legal rules; in fact, there are no rules other than their strict and self-proclaimed interpretation of religion, and on this basis they exercise sovereignty over millions of citizens. [62]Therefore, the fundamental question is: can a regime without responsibility for human rights remain immune from any accountability? Or will simply documenting violations, without an enforcement mechanism, be sufficient and effective? Therefore, this research does not only address the violence and torture committed by a violating regime, but also analyzes the conflict between practical power and its legal responsibility; a conflict that lies at the heart of the human rights crisis in Afghanistan.[63]

This research is that there is no effective enforcement mechanism for accountability for the Taliban's torture. The Taliban are neither a party to the Convention Against Torture (CAT) nor do they consider themselves bound by international norms; instead, they have declared their legitimacy solely on the basis of "interpretative Sharia."[64] Furthermore, due to their lack of formal recognition in the international system, the Taliban are in an ambiguous legal status or "gray area" that limits the possibility of applying traditional mechanisms of international accountability.[65]

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and Amnesty International, 2023), 5–10, 24–27, https://www.icj.org/wp-content/uploads/2023/05/The-Talibans-war-on-women-the-crime-against-humanity-of-gender-persecution-in-Afghanistan-FINAL-VERSION.pdf.

[62] OHCHR, Afghanistan: National Report Submitted to the UPR, 2022

[63] UNHRC, Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan, 2023.

[64] James Ker-Lindsay, "Engagement without Recognition: The Limits of Diplomatic Interaction with Contested States," *International Affairs* 91, no. 2 (2015): 267–85, https://doi.org/10.1111/1468-2346.12234.

[65] Rangita De Silva De Alwis, "Holding the Taliban Accountable for Gender Persecution: The Search for New Accountability Paradigms under International Human Rights Law, International Criminal Law and Women, Peace, and Security," *German Law Journal* 25, no. 2 (2024): 289–334, https://doi.org/10.1017/glj.2023.113.

As the report by Richard Bennett, the UN Special Rapporteur on human rights in Afghanistan, has made clear, the Taliban have used this legal and institutional vacuum to evade accountability and have deliberately refused to accept any international obligations.[66] While the International Criminal Court (ICC) has kept the Afghan case active, the lack of formal cooperation and effective enforcement mechanisms have hindered prosecution of crimes. As a result, the Afghan people are caught between two conflicting realities: on the one hand, the universally binding rules prohibiting torture, and on the other, the lack of effective enforcement institutions.[67] This situation has not only left victims defenseless, but has also seriously questioned the legitimacy and authority of the international legal system.[68]This persistent denial of accountability not only endangers the universality of human rights but also exposes the structural weakness of the international legal system in dealing with non-recognized regimes such as the Taliban.[69]

c. The Taliban as a De Facto Authority

The concept of a de facto authority in international law is based on the actual exercise of power, rather than simply on formal international recognition. When a group has effective control over a country's territory, population, and governmental institutions and, in practice, performs government functions, its legal status goes beyond that of an ordinary non-state group. Since taking control of Afghanistan on 15 August 2021, the Taliban has exercised effective control over the country's political, administrative, security, and judicial structures.

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[66] Geneva Centre for Human Rights Advancement and Global Dialogue, *Interactive Dialogue with the Special Rapporteur on the Situation of Human Rights in Afghanistan* (Geneva Centre for Human Rights Advancement and Global Dialogue, 2022), https://gchragd.org/wp-content/uploads/2022/09/2022.09.12-HRC51-ID-with-SR-on-Afghanistan-Geneva-Centre.pdf.

[67] "Afghanistan | International Criminal Court," accessed October 17, 2025, https://www.icc-cpi.int/afghanistan.

[68] Photeine Lambridis, "He International Criminal Court and Afghanistan: Leveraging Politics to Bolster," *New York University Journal of International Law & Politics* 54 (2022): 1021-1027 https://www.nyujilp.org/wp-content/uploads/2022/10/Lambridis.pdf.

[69] "He International Criminal Court and Afghanistan: Leveraging Politics to Bolster."

In practice, it has also taken responsibility for functions such as managing detention facilities, enforcing laws, conducting interrogations, and imposing punishments. Although the Taliban does not have broad international recognition as the legitimate government of Afghanistan, its actual exercise of authority and continuous management of public affairs show that it operates in practice as a de facto authority.[70]

This situation is particularly important under the Convention against Torture (CAT). Article 1 of the Convention defines torture as an act committed by a "public official or other person acting in an official capacity," or with the consent or acquiescence of such a person. Therefore, the key issue is not simply whether the government is formally recognized, but whether the individuals concerned actually exercise public authority and governmental powers. Since Taliban members and officials have, in practice, the power to arrest, interrogate, punish, and use coercive force against individuals, an important question arises: can they be considered persons "acting in an official capacity" within the meaning of Article 1 of the Convention?[71]

Answering this question is fundamental to determining whether the Convention against Torture applies to the actions of the Taliban. If Taliban officials are found to be acting in an official capacity, acts of torture and other cruel, inhuman, or degrading treatment or punishment committed by them would not only constitute human rights violations but could also amount to violations of obligations arising from one of the most important peremptory norms of international law.[72]

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[70] United Nations Assistance Mission in Afghanistan (UNAMA), Human Rights in Afghanistan: 15 August 2021–15 June 2022, July 2022.

[71] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Article 1.

[72] United Nations Assistance Mission in Afghanistan (UNAMA), Torture and Other Human Rights Violations in Afghanistan's Places of Detention, 1 January 2022–31 July 2023, 20 September 2023.

1.7 Research Methodology

Research is a systematic and scientific method used to obtain information, solve problems, answer research questions, and generate new knowledge. This involves a structured and organized process of collecting, analyzing, and arranging data with the aim of making it useful for decision-making purposes.

a. Research Method

The present study employs the Normative Legal Research method because it aims to identify, interpret, and analyze laws, international instruments, customary principles, peremptory norms, and doctrinal works to determine whether the Taliban's actions between 2021 and 2025 constitute torture and inhumane punishment under international human rights law.[73] This method was chosen because the research focuses on the legal comparison and analysis of international standards and the Taliban's actions.

This research is conducted exclusively within the framework of international human rights law and does not apply international humanitarian law. Three reasons support this limitation. First, the application of international humanitarian law would require establishing the existence and legal classification of an armed conflict in Afghanistan between 2021 and 2025, a separate and contested inquiry falling outside the scope of this study. Second, the prohibition of torture under international human rights law applies at all times and in all circumstances: Article 2(2) of the Convention against Torture and Article 4(2) of the International Covenant on Civil and Political Rights expressly exclude any derogation, including during armed conflict, so that confining the analysis to international human rights law creates no gap in protection and renders the conclusions independent of any classification of the situation. Third, the Convention against Torture, which constitutes

[73] Marzuki, Peter Mahmud. 2005. *Legal Research.* Jakarta: Kencana.

the principal legal framework of this research, is an instrument of international human rights law rather than of international humanitarian law.

b. Research Approach

1) The statutory approach

The statutory approach involves examining the laws and rules related to the legal issues under investigation. The goal is to identify the intellectual foundations and the legal basis of the relevant norms.[74] Accordingly, the statutory approach in this research includes a comprehensive interpretation and analysis of the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, customary principles, the Convention against Torture, as well as reports of the Office of the High Commissioner for Human Rights (OHCHR) and UNAMA.

2) Conceptual Approach

The conceptual approach means combining the analysis of legal rules and regulations with the examination of their practical implementation, while at the same time addressing fundamental concepts and theories in law.[75] In this section, the peremptory norm prohibiting torture and inhuman punishment, respect for human dignity, the responsibilities of non-state actors, as well as universal jurisdiction are examined to clarify why the prohibition of torture is absolute and no emergency can justify it, and this prohibition is also binding on non-state actors such as the Taliban.

3) Historical Approach

The researcher wishes to find previously studied information that is related to the present and more specifically relevant to the issue being studied. Conducting comparison against: legislation, or the implementation of laws and regulations, or court

[74] Ibid,p, 93.
[75] Ibid,,p.133-134.

decisions regarding certain cases, or legal institutions of certain legal systems. Right for.[76] The behavior of the Taliban is assessed in the prototype of UNAMA reports, Amnesty International, Human Rights Watch and that their behavior was systematic and not derived from individual actions as well as cases and documents that have emphasized the prohibition of torture and inhuman treatment

c. Sources of Research Data

1) Primary Legal Materials

   a) International Covenant on Civil and Political Rights (ICCPR)

   b) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

   c) Universal Declaration of Human Rights (UDHR)

   d) Customary international law and peremptory norms (jus cogens)

   e) Official reports of the United Nations, including UNAMA, the Office of the High Commissioner for Human Rights (OHCHR), and UN Special RapporteursThese materials provide the principal basis for the legal interpretation and analysis in this research.

2) Secondary Legal Materials

   a) Books and academic articles authored by scholars such as Antonio Cassese, Manfred Nowak, Erika de Wet, Andrew Clapham, and Gloria Gaggioli Bellal

   b) Reports issued by human rights organizations, including Human Rights Watch (HRW) and Amnesty International

   c) Academic analyses on the Taliban and the international responsibility of non-state actors

[76] Ibid. p, 141.

d) Academic analyses on the Taliban and the international responsibility of non-state actors

These sources support the theoretical framework, comparative analysis, and overall strengthening of arguments in this research.

3) Tertiary Legal Materials

a) Legal dictionaries

b) Legal encyclopedias

c) References and indexes

These materials help ensure accuracy in terminology and conceptual clarity throughout the study.

d. Method of Data Collection

The data for this research is collected through:

1. Library study, involving printed and digital materials such as books, academic articles, UN reports, and publications from research institutions or think tanks.
2. Documentary analysis, including examination of treaties, resolutions, judicial opinions, and official statements of governments and international organizations.
3. Use of scholarly databases, such as HeinOnline, JSTOR, SSRN, and the UN Digital Library, to access authoritative and updated legal sources.

1.8 Writing Framework

Chapter I provides an overview of the research and includes the following sections: research background, problem statement, research objectives, research innovation, definition of concepts, research methodology, and writing structure.

Chapter II provides an overview of international human rights law related to the prohibition of torture and inhuman punishment, including the Covenant on Civil and Political

Rights, the Convention against Torture, the Universal Declaration of Human Rights, international custom, and relevant case law. It also examines the peremptory nature of the prohibition of torture and the obligations of states and non-state actors, including the legal status of the Taliban as an “effective power.

Chapter III examines the legal status of the Taliban as a de facto authority in Afghanistan and considers whether Taliban members exercising governmental functions may be regarded as persons acting in an official capacity under Article 1 of the Convention against Torture. It further examines the extent to which Taliban members and officials may bear legal responsibility for acts of torture and other cruel, inhuman, or degrading treatment or punishment committed between 2021 and 2025.

Chapter IV includes conclusions and recommendations based on the findings of the previous chapters.

CHAPTER II
THEORETICAL FRAMEWORK

International human rights legislation, international humanitarian law, and international criminal law have all helped to shape the concept of torture over time. The Universal Declaration of Human Rights and the European Convention on Human Rights, two of the earliest instruments to outlaw torture, failed to provide a specific and comprehensive legal definition of the term. Subsequently, the Convention against Torture issued a more precise definition of torture in Article 1, which is today recognized as the most significant legal underpinning for the prohibition of torture in international human rights law.

2.1.The Concept of Torture under International human rights law

a. Article 1 of the Convention against Torture and Legal Elements of Torture

Article 1 of the Convention against Torture provides the most authoritative treaty definition of torture in contemporary international human rights law. According to the Convention, torture refers to any act by which severe physical or mental pain or suffering is intentionally inflicted for purposes such as obtaining information or a confession, punishment, intimidation, coercion, or discrimination, when such pain or suffering is inflicted by, at the instigation of, or with the consent or acquiescence of a public official or another person acting in an official capacity.[77] The definition also excludes pain or suffering arising only from lawful sanctions. Through this formulation, the Convention establishes torture as a distinct legal category rather than a general description of abusive treatment.

[77] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1. [102] Guide on Article 3 of the European Convention on Human Rights: Prohibition of Torture (European Court of Human Rights, 2025), pp. 6–8.

The legal components of torture under Article 1 typically consist of a prohibited purpose, intentional conduct, and severe physical or mental suffering." International jurisprudence has underscored the necessity of contextualizing these elements, It has been emphasized in international jurisprudence that these elements should generally be evaluated contextually rather than through rigid legal formulations.[78]

b. Severe Physical or Mental Pain or Suffering

"The existence of severe physical or mental pain or suffering is one of the central elements of torture." In order for conduct to be classified as torture, the suffering inflicted must be of an adequate severity, as stipulated in Article 1 of the Convention against Torture. International courts typically evaluate severity in a contextual manner, considering the victim's condition, the method and duration of the abuse, and the surrounding circumstances.[79] Similarly, the Committee against Torture has accepted that severe mental suffering may satisfy the threshold even in the absence of extreme physical violence. Threats of death, prolonged isolation, sleep deprivation, mock executions, and exposure to constant fear have therefore been treated in some cases as forms of psychological torture.[80]

Modern international law no longer limits torture to physical pain alone, because mental suffering may produce equally devastating consequences for human dignity and personal integrity.[81] Despite these developments, the threshold requirement remains legally important because not every unlawful or abusive act automatically amounts to torture. International

[78] J. Herman Burgers and Hans Danelius, The United Nations Convention against Torture (Martinus Nijhoff, 1988), pp. 118–120.

[79] Manfred Nowak, Torture in International Law: A Guide to Jurisprudence (Oxford University Press, 2008), p.

[80] Committee against Torture, Report on Argentina, UN Doc. A/45/44 (1990), para. 154.

[81] Manfred Nowak and Elizabeth McArthur, The United Nations Convention Against Torture: A Commentary (Oxford University Press, 2008), p. 74.

law continues to distinguish torture from cruel, inhuman, or degrading treatment partly on the basis of the gravity of suffering involved.[82]

c. Intent Requirement

Another essential element of torture under Article 1 of the Convention against Torture is intent. The Convention requires that severe pain or suffering be intentionally inflicted. This requirement distinguishes torture from harm resulting from accident, ordinary negligence, or unintended consequences. A number of commentators, including Nigel Rodley, maintain that recklessness may in certain situations satisfy the intent requirement where officials knowingly expose detainees to conditions that predictably cause severe suffering.[136]

By contrast, simple negligence is generally regarded as insufficient because torture requires a conscious element connected to the infliction of suffering. International practice also demonstrates that intent may be inferred from surrounding circumstances rather than proven only through explicit statements. Repeated beatings during interrogation, deliberate denial of medical treatment, systematic sleep deprivation, or prolonged exposure to violent detention conditions may collectively indicate intentional conduct even where no direct admission exists.[83] International tribunals have therefore relied heavily on patterns of behavior, institutional practices, and contextual evidence when assessing intent.

The Human Rights Committee and the Committee against Torture have further emphasized that omissions may also satisfy the intent requirement where authorities knowingly permit severe suffering to occur.[84] For example, deliberate refusal to provide urgent medical care, intentional exposure of detainees to extreme conditions, or

[82] Torture and Cruel, Inhuman or Degrading Treatment: A Definitional Approach, p. 11.

[83] Prosecutor v Delalić et al. (Čelebići Case), ICTY Trial Chamber, Case No. IT-96-21-T, Judgment, 16 November 1998, para. 470.

[84] Human Rights Committee, General Comment No. 20, 1992, para. 13.

acquiescence in abusive treatment by subordinates may amount to torture when officials are aware of the likely consequences and fail to intervene. .[85] Contemporary international jurisprudence generally adopts a contextual approach that evaluates both the conduct itself and the surrounding circumstances in determining whether intentional infliction of suffering has occurred.

d. Prohibited Purpose

In addition to severity and intent, Article 1 of the Convention against Torture requires that the act be committed for a prohibited purpose. The Convention specifically refers to purposes such as obtaining information or confessions, punishment, intimidation, coercion, or discrimination. .[86] Purposive element therefore remains an important component in distinguishing torture from other forms of ill-treatment[87] coercion, intimidation, and the extraction of information are frequently identified as prohibited purposes under Article 1 in international jurisprudence.[88] Discrimination has also emerged as an increasingly important purpose within the interpretation of torture. International human rights bodies have recognized that severe abuse motivated by gender, ethnicity, religion, political opinion, or other discriminatory grounds may satisfy the purposive element of torture International jurisprudence has generally attempted to preserve this balance by interpreting prohibited purposes flexibly while still treating them as an essential legal component of torture under the Convention.[89]

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[85] Manfred Nowak, Torture in International Law: A Guide to Jurisprudence, p. 82.

[86] J. Herman Burgers and Hans Danelius, The United Nations Convention against Torture (Martinus Nijhoff, 1988), p. 119.

[87] Aksoy v Turkey (1996) 23 EHRR 553.

[88] Aydin v Turkey (1997) VI ECHR 1866.

[89] The Definition(s) of Torture in International Law, 55 Current Legal Problems (2002), pp. 480–482.

e. Official Capacity and the Involvement of Public Authority

One of the most debated elements within the legal definition of torture concerns the requirement that the prohibited conduct must be connected, directly or indirectly, to public authority. Article 1 of the Convention against Torture does not criminalize every act of violence that causes severe pain or suffering. Rather, it limits torture to conduct inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." This element distinguishes torture from ordinary private violence and links the prohibition to the misuse of authority, power, or institutional control.[90]

In practice, however, the meaning of "official capacity" has generated extensive legal debate. Earlier interpretations tended to adopt a narrow understanding of the term and associated torture almost exclusively with acts committed by recognized state officials. Burgers and Danelius argued that the Convention was primarily drafted to regulate abuses committed through state structures because torture historically emerged as a tool of governmental repression rather than ordinary interpersonal violence.[145] According to this traditional view, the decisive factor is not merely the severity of suffering, but the existence of a connection between the act and public authority.

Nevertheless, developments in international jurisprudence gradually complicated this strict state-centered approach. International human rights bodies increasingly recognized that torture may also arise where authorities tolerate, ignore, or indirectly enable abusive conduct committed by non-state actors. The Human Rights Committee, while interpreting Article 7 of the International Covenant on Civil and Political Rights, emphasized that states may violate the prohibition of torture not only through direct participation, but also through

[90] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, art. 1. [145] J. Herman Burgers and Hans Danelius, The United Nations Convention against Torture (Martinus Nijhoff 1988) 118–120.

failure to provide protection against prohibited acts committed by private persons.[91] In this sense, state responsibility may arise from omission as well as direct action.

The Committee against Torture adopted a similar but more detailed approach. Its jurisprudence indicates that consent or acquiescence may exist where authorities know, or reasonably should know, that severe ill-treatment is occurring but fail to take adequate preventive or protective measures.[92] The decision in Dzemajl and Others v Yugoslavia is often cited in this regard. In that case, police officers reportedly failed to intervene during attacks against a Roma community despite being present near the scene. The Committee considered that such passivity could amount to acquiescence within the meaning of the Convention.[93] The significance of this interpretation lies in the fact that responsibility may emerge not only from direct infliction of torture, but also from deliberate indifference or tolerated abuse.

A further doctrinal debate concerns situations in which effective governmental authority is exercised by entities that lack formal international recognition. This issue became particularly important in conflicts, transitional administrations, and territories where state institutions collapsed or lost effective control. The jurisprudence of the Committee against Torture demonstrates that the interpretation of “public official” has not remained entirely dependent upon formal recognition by other states. In Elmi v Australia, which concerned conditions in Somalia during the absence of a functioning central government, the Committee accepted that groups exercising quasi-governmental authority could, in exceptional circumstances, fall within the scope of Article 1 of the Convention. The decision

[91] Human Rights Committee, General Comment No. 20, UN Doc. HRI/GEN/1/Rev.1 (1994) para. 13.

[92] Committee against Torture, General Comment No. 2, UN Doc. CAT/C/GC/2 (2008) para. 18.

[93] Dzemajl and Others v Yugoslavia, CAT Communication No. 161/2000, Decision of 21 November 2002, para.

reflected a functional approach based on the exercise of authority rather than formal legal status alone.

At the same time, subsequent jurisprudence reveals that international bodies have approached this issue cautiously. In H.M.H.I. v Australia, the Committee appeared reluctant to extend the concept of official capacity too broadly once a transitional governmental structure had reemerged in Somalia.[94] This hesitation illustrates an unresolved tension within international law. On one side stands the traditional assumption that torture is closely connected to recognized state authority; on the other stands the practical reality that many contemporary abuses occur in territories controlled by de facto authorities exercising powers similar to those of governments.

Several scholars have therefore argued for a more functional interpretation of official capacity. Nigel Rodley and Matt Pollard maintain that the central concern of the Convention is the abuse of coercive authority rather than the formal diplomatic status of the actor involved.[95] Similarly, Ginevra Le Moli observes that limiting the definition exclusively to internationally recognized governments risks creating legal gaps in situations where armed groups or de facto administrations exercise stable territorial control and operate detention structures comparable to state institutions.[96] From this perspective, the decisive issue becomes the exercise of effective authority over persons rather than formal recognition under international law. International jurisprudence has therefore attempted to balance these concerns by focusing on effective control, institutional authority, and the exercise of governmental functions.[97]

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[94] H.M.H.I. v Australia, CAT Communication No. 177/2001, Decision of 1 May 2002, para. 6.4.

[95] Nigel Rodley and Matt Pollard, 'Criminalisation of Torture: State Obligations under the United Nations Convention against Torture' (2006) 2 European Human Rights Law Review 115, 120–122.

[96] Ginevra Le Moli, Torture by Non-State Actors: Four Inquiries (2026) 11–15.

[97] Torture in International Law: A Guide to Jurisprudence (Association for the Prevention of Torture 2008) 72–

2.2. The Prohibition Cruel, Inhuman or Degrading Treatment or Punishment (CIDT) under International Law

a. Legal Basis of CIDT

The prohibition of cruel, inhuman or degrading treatment or punishment (CIDT) forms an essential part of contemporary international human rights law and is closely connected to the prohibition of torture. Although torture is regarded as the gravest form of ill-treatment, conduct falling below the threshold of torture may still constitute a serious human rights violation .[98] Article 7 of the ICCPR provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[99] Unlike the Convention against Torture, however, Article 7 does not define the scope of the prohibited conduct.The jurisprudence of the Human Rights Committee demonstrates that CIDT may arise in a wide range of situations, especially where individuals are deprived of liberty. The assessment depends on factors such as duration, consequences of the conduct, and the vulnerability of the victim.[100] Thus, treatment which may not amount to torture in one context could nevertheless constitute cruel or degrading treatment in another .[101]

Article 10 of the ICCPR further strengthens this protection by recognizing that all persons deprived of their liberty must be treated with humanity and with respect for the

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[98] Nigel S. Rodley and Matt Pollard, The Treatment of Prisoners under International Law (3rd edn, Oxford University Press 2009) 82.

[99] International Covenant on Civil and Political Rights 1966, art. 7.

[100] Vuolanne v Finland, Communication No. 265/1987, UN Doc CCPR/C/35/D/265/1987 (1989) para. 9.2.

[101] Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary (2nd revised edn, N.P. Engel 2005) 161.

inherent dignity of the human person.[102] While Article 7 primarily addresses prohibited acts of abuse, Article 10 establishes a positive obligation regarding detention conditions and humane treatment. [103] The Human Rights Committee has treated Article 10 as complementing Article 7, particularly regarding detention conditions and degrading treatment.[104] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides a more detailed legal framework concerning torture and CIDT.

Unlike the ICCPR, the CAT contains a specific definition of torture in Article 1, while Article 16 obliges States Parties to prevent "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture."[105] Nevertheless, the Convention deliberately refrains from providing a precise definition of CIDT. This omission has contributed to continuing doctrinal debate concerning the exact threshold separating torture from other forms of ill-treatment.[106] The distinction between torture and CIDT remains unclear in practice. While some scholars emphasize the severity of suffering, others focus on factors such as purpose, vulnerability, and coercive circumstances. Accordingly, the boundary between torture and CIDT remains largely contextual.[107] Manfred Nowak, for

[102] ICCPR, art. 10(1).

[103] Human Rights Committee, General Comment No. 21: Humane Treatment of Persons Deprived of Their Liberty (1992) para. 3.

[104] Kennedy v Trinidad and Tobago, Communication No. 845/1998, UN Doc CCPR/C/74/D/845/1998 (2002) paras. 7.7–7.8.

[105] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, arts. 1 and 16.

[106] Malcolm D. Evans, International Human Rights Law (2nd edn, Oxford University Press 2014) 221.

[107] Henry J. Steiner, Philip Alston and Ryan Goodman, International Human Rights in Context (3rd edn, Oxford University Press 2008) 187.

example, argues that the powerlessness of the victim and the purposive nature of the abuse may be more decisive than the intensity of pain alone.[108]

Regional human rights systems have also played a significant role in shaping the legal understanding of CIDT. The European Court of Human Rights (ECtHR), interpreting Article 3 of the European Convention on Human Rights, has consistently held that torture and inhuman or degrading treatment are absolutely prohibited under all circumstances.[109] In Ireland v United Kingdom, the Court distinguished torture from inhuman treatment primarily on the basis of the intensity of suffering inflicted.[110] Similarly, the Inter-American Court of Human Rights has adopted an expansive interpretation of ill-treatment, recognizing that psychological suffering, fear, humiliation, and prolonged uncertainty may constitute inhuman or degrading treatment even in the absence of severe physical violence.[111]

Taken together, international and regional instruments demonstrate that the prohibition of CIDT constitutes an autonomous and fundamental norm of international human rights law. Although the distinction between torture and CIDT remains contested, both prohibitions protect individuals against abuse of power and serious violations of human dignity.[173]

b. Threshold Difference between Torture and CIDT

One of the most debated questions in international human rights law concerns the legal threshold separating torture from cruel, inhuman or degrading treatment (CIDT). Although

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[108] Manfred Nowak and Elizabeth McArthur, "The Distinction Between Torture and Cruel, Inhuman or Degrading Treatment" (2006) 16(3) Torture 149.

[109] European Convention on Human Rights 1950, art. 3.

[110] Ireland v United Kingdom, App No 5310/71 (ECtHR, 18 January 1978) para. 167.

[111] Dinah Shelton, Remedies in International Human Rights Law (3rd edn, Oxford University Press 2015) 298. [173] Andrew Clapham, Human Rights: A Very Short Introduction (Oxford University Press 2015) 63.

both forms of conduct are absolutely prohibited, international instruments and judicial bodies have not always drawn a precise distinction between them.[112] The difficulty arises because torture and CIDT frequently overlap in practice, particularly in situations involving detention, interrogation, intimidation, or abuse by public authorities.[113] The most widely accepted approach distinguishes torture from CIDT primarily on the basis of the severity and intensity of the suffering inflicted upon the victim.[114] Under Article 1 of the Convention against Torture (CAT), torture requires the intentional infliction of "severe" physical or mental pain or suffering for a prohibited purpose.[115] CIDT, by contrast, generally refers to conduct causing serious humiliation, fear, distress, or suffering that does not reach the extreme threshold associated with torture.[116]

Nevertheless, determining what level of suffering becomes sufficiently "severe" remains inherently subjective and context-dependent. The requirement of purpose also plays an important role in differentiating torture from CIDT. Article 1 CAT specifically links torture to purposes such as punishment, coercion, intimidation, obtaining information, or discrimination.[117] Some scholars argue that this purposive element constitutes the decisive legal distinction between torture and other forms of ill-treatment.[118] In this view, torture involves the deliberate instrumentalization of suffering in order to dominate, punish, or

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[112] Convention against Torture 1984, arts. 1 and 16.

[113] Nigel S. Rodley and Matt Pollard, The Treatment of Prisoners under International Law (3rd edn, Oxford University Press 2009) 89.

[114] Malcolm D. Evans, International Human Rights Law (2nd edn, Oxford University Press 2014) 223.

[115] Convention against Torture 1984, art. 1(1).

[116] Manfred Nowak and Elizabeth McArthur, The United Nations Convention Against Torture: A Commentary (Oxford University Press 2008) 558.

[117] Convention against Torture 1984, art. 1(1).

[118] Manfred Nowak and Elizabeth McArthur, "The Distinction Between Torture and Cruel, Inhuman or Degrading Treatment" (2006) 16(3) Torture 150. [183] Ibid.

break the will of the victim, whereas CIDT may occur even in the absence of a clearly identifiable coercive purpose.[183]

2.3. Absolute Prohibition of Torture

a. Non-Derogability under International Human Rights Law

The prohibition of torture occupies a unique position within international human rights law because it is recognized as an absolute and non-derogable norm. Unlike certain civil and political rights that may be temporarily restricted during periods of public emergency, the prohibition against torture cannot be suspended under any circumstances.[119] The International Covenant on Civil and Political Rights (ICCPR) expressly recognizes the possibility of derogation during exceptional situations threatening the life of the nation. Article 4 ICCPR permits States Parties to adopt temporary measures derogating from some Covenant obligations during officially proclaimed emergencies.[120] Nevertheless, Article 4(2) specifically excludes certain rights from derogation, including the prohibition contained in Article 7, which protects individuals against torture and cruel, inhuman or degrading treatment or punishment.[121] states remain legally prohibited from engaging in torture or authorizing its use.[122]

The Human Rights Committee has repeatedly emphasized the absolute character of Article 7 ICCPR. In its General Comment No. 29, the Committee clarified that no justification or exceptional circumstance may be invoked to excuse violations of Article 7,

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[119] Malcolm N. Shaw, International Law (8th edn, Cambridge University Press 2017) 282.

[120] International Covenant on Civil and Political Rights 1966, art. 4(1).

[121] ICCPR, art. 4(2).

[122] Sarah Joseph and Melissa Castan, The International Covenant on Civil and Political Rights: Cases, Materials and Commentary (3rd edn, Oxford University Press 2013) 912.

including threats to national security or public order.[123] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) further reinforces this absolute prohibition. Article 2(2) CAT provides that "[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."[124]The absolute nature of the prohibition also means that superior orders or instructions from public authorities cannot justify torture. Article 2(3) CAT explicitly rejects the defence of superior orders, thereby affirming the personal responsibility of individuals who participate in acts of torture.[130] For this reason, International jurisprudence therefore recognizes the prohibition of torture as a fundamental and universally binding obligation.[214]

b. Torture as Jus Cogens and Legal Consequences of Jus Cogens Status

The prohibition of torture is widely regarded as one of the clearest examples of a jus cogens norm in contemporary international law. Although scholarly debate continues regarding the precise content and scope of jus cogens, there is broad agreement among international courts, legal scholars, and international bodies that the prohibition of torture possesses a peremptory character from which no derogation is permitted.[125] International courts have played a particularly important role in affirming the peremptory status of the prohibition. The Inter-American Court of Human Rights emphasized in Gómez Paquiyauri Brothers v Peru that the prohibition of torture is absolute and nonderogable even during war, terrorism, political instability, or public emergency.[126] The Court further stated that an

[123] Human Rights Committee, General Comment No. 29: States of Emergency (Article 4), UN Doc CCPR/C/21/Rev.1/Add.11 (2001) para. 7.

[124] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, art. 2(2). [130] Convention against Torture 1984, art. 2(3).

[125] Malcolm N. Shaw, International Law (8th edn, Cambridge University Press 2017) 94.

[126] Gómez Paquiyauri Brothers v Peru, Judgment of 8 July 2004, paras. 111–112.

international legal regime has emerged in which all forms of torture, whether physical or psychological, belong to the domain of international jus cogens.[127]

The Vienna Convention on the Law of Treaties provides the principal legal framework concerning jus cogens norms. Article 53 defines a peremptory norm of international law as a norm accepted and recognized by the international community of states as one from which no derogation is permitted and which may be modified only by another norm of the same character.[128] The implications of this status are significant. Any treaty provision permitting torture would be legally void, and states cannot rely upon domestic legislation, emergency powers, or political necessity to justify acts of torture.[129] Moreover, the jus cogens character of the prohibition generates obligations owed to the international community as a whole (erga omnes).[130]

In international law, peremptory norms occupy a higher legal status .[131] In the context of torture, this means that states cannot lawfully justify torture through bilateral agreements, emergency legislation, or security policies.[132]Because torture violates fundamental interests of humanity, all states have a legal interest in its prevention and condemnation..[133] The jus cogens status of torture also reinforces obligations to prevent, investigate, and refrain from supporting practices connected with torture.[134] Although disagreement remains regarding

[127] Ibid.

[128] Vienna Convention on the Law of Treaties 1969, art. 53.

[129] Dinah Shelton, Remedies in International Human Rights Law (3rd edn, Oxford University Press 2015)

[130] Andrew Clapham, Human Rights: A Very Short Introduction (Oxford University Press 2015) 68.

[131] Antonio Cassese, International Law (2nd edn, Oxford University Press 2005) 203.

[132] Malcolm N. Shaw, International Law (8th edn, Cambridge University Press 2017) 95.

[133] Barcelona Traction Case, ICJ Reports 1970, para. 33.

[134] Antônio Augusto Cançado Trindade, International Law for Humankind (Martinus Nijhoff 2010) 245.

Manfred Nowak and Elizabeth McArthur, The United Nations Convention Against Torture: A Commentary (Oxford University Press 2008) 82.

the precise scope of these consequences, contemporary international law leaves little doubt that torture occupies a uniquely prohibited position within the legal order.

2.4. Human Dignity Theory

The theoretical basis of this study is the Human Dignity Theory, which is used to examine the conduct of the Taliban under the Convention Against Torture. According to this theory, every person has inherent dignity, and this dignity must be respected under all circumstances. Therefore, torture and cruel, inhuman, or degrading treatment are considered clear violations of human dignity.[135]

Although the Taliban are not officially recognized as the legitimate government of Afghanistan, their effective control over the country and its population means that they are required to respect basic human rights principles, including the prohibition of torture.[136] The prohibition of torture is also considered a jus cogens rule of international law and is therefore binding on all parties.Therefore, the Human Dignity Theory provides a basis for examining the extent to which the Taliban comply with their obligations concerning the prohibition of torture and the protection of human rights..[137]

[135] Shue Henry, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd edition (Princeton University Press, 1996), 32–42, https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/evnts/media/Henry_Shue_Basic_Rights.pdf.
[136] United Nations General Assembly 1948; UN Human Rights Committee 1992
[137] United Nations, *Materials on the Responsibility of States for Internationally Wrongful Acts*, United Nations Legislative Series (United Nations, 2013),31-33 and 80–90, https://doi.org/10.18356/1b3062be-en.

CHAPTER III
ANALYSIS AND DISCUSSION

3.1. Documented Cases and Patterns of Torture and Ill-Treatment (2021–2025)

a. Torture during Arrest and Interrogation

The prohibition of torture is one of the most fundamental and unequivocal safeguards of human rights recognized by international human rights law. This ban is founded on the intrinsic dignity of the human person and safeguards the bodily and mental integrity of all persons, especially those deprived of their liberty, at all times and in all circumstances, including at the time of arrest, imprisonment and questioning. Furthermore, the notion of torture is not restricted to the administration of physical pain but also encompasses significant mental anguish, fear, intimidation, humiliation and other types of coercive treatment, when they are of adequate intensity. Accordingly, in order to judge the occurrence of torture, physical pain and mental suffering must be examined simultaneously, considering the kind, severity, length and impact of the action committed.

The Convention against Torture (CAT) Article 1 and the International Covenant on Civil and Political Rights (ICCPR) Article 7 provide the legal basis for the factor of “severe physical or mental pain or suffering”. These instruments ban all forms of torture and cruel, inhuman or degrading treatment or punishment. Further, General Comment No. 20 of the Human Rights Committee and General Comment No. 2 of the Committee against Torture provide that the prohibition of torture encompasses both physical and mental suffering, which may occur depending on the severity and circumstances of each instance. Furthermore, international jurisprudence, in particular the case of Ireland v. United Kingdom, has taken the intensity of pain as the paramount consideration in separating torture from other types of ill-treatment.

Since August 2021, one of the most frequently reported human rights concerns in Afghanistan has been the treatment of individuals during arrest and interrogation. Journalists, civil society activists, former government employees, protesters, and other persons considered critical of the de facto authorities have repeatedly been arrested without clear legal grounds and, in many cases, subjected to physical violence or psychological pressure.[138] The Taliban police operate without clear legal authority and accountability. Instead of maintaining public safety, they execute Taliban policies thru arbitrary arrests, intimidation, and brutality.[139]

The available evidence also suggests that these incidents were not isolated. According to the United Nations Assistance Mission in Afghanistan (UNAMA), between August 2021 and September 2024, 336 human rights violations against journalists and media workers were documented. These included 256 arbitrary arrests and detentions, 130 cases of torture and ill-treatment, and 75 incidents involving threats and intimidation.[140] These figures indicate that abuse during arrest and questioning has become a recurring concern rather than a series of unrelated events.

Several individual cases illustrate this broader pattern. In May 2022, television journalist Khan Mohammad Sial was arrested in Uruzgan Province. According to the Committee to Protect Journalists, Taliban officials beat him while he was in custody and pressured him to admit that his television station was receiving financial support from foreign countries.[141]

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[138] United Nations Assistance Mission in Afghanistan (UNAMA), Human Rights Situation in Afghanistan: August 2021–September 2024 (2024), pp. 36–41.

[139] World Organisation Against Torture (OMCT), *Global Torture Index 2025: Afghanistan Factsheet* (2025) 1.

[140] UNAMA, Media Freedom in Afghanistan (November 2024), pp. 1–2.

[141] Committee to Protect Journalists (CPJ), Taliban Members Beat Journalist at Kabul Checkpoint, Detain Two Others, 22 June 2022; Reporters Without Borders (RSF), Many Arbitrary Arrests of Afghan Journalists (2022).

Another example is Mirza Hassani, the owner of Radio Aftab in Daikundi Province. After his arrest, he was transferred to a detention facility in Herat. Following his release, Hassani stated that he had been beaten and tortured during detention after being accused of cooperating with the National Resistance Front.[142] A similar incident involved Mirwais Atal and several local journalists who were arrested in Kandahar in March 2022. They were held for several days without a clear explanation. After his release, Atal described his experience as "psychological torture" [143]

From a legal perspective, these incidents are important because the Convention against Torture does not require permanent physical injury before an act can amount to torture. Beatings, serious threats, psychological pressure, and attempts to force confessions may all fall within the scope of torture where they are intentionally used to obtain information, punish, intimidate, or coerce a detainee.[144]

In applying the documented evidence set out above to the criteria in Article 1 of the Convention against Torture, it can be concluded that the reported acts — beatings during custody and interrogation, sustained pressure to confess, and threats made to detainees held without charge — are capable of inflicting severe physical pain and profound mental suffering. (Reports by Rawadari additionally document allegations of waterboarding, electric shocks, suffocation and denial of medical care, which are analysed in section c below.) Furthermore, the gravity, character and consequences of these acts correspond to the requirements established in the international practice. Thus, the first factor, the infliction

[142]International Federation of Journalists (IFJ), Taliban Detains Three Media Workers, May 2022; Hasht-e Subh, "Taliban Arrests the Owner of Aftab Radio Station in Daikundi," 29 March 2022.

[143]International Press Institute (IPI), Taliban Detain TOLO News Employees (2022); Human Rights Watch, World Report 2023: Afghanistan.

[144] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984, entered into force 26 June 1987, art. 1.

of extreme bodily or mental agony or suffering, is proved in many documented incidents involving captives under the rule of the Taliban.

b. Torture in Detention Facilities

Article 1 of the Convention requires that severe pain or suffering be inflicted intentionally. Pain or suffering arising from mere negligence, inadequate conditions of confinement, or unforeseen consequences does not, without more, amount to torture. What is required is that the perpetrator deliberately performs the act from which severe physical or mental suffering is likely to result.

Under Article 1 of the Convention Against Torture (CAT), deliberate inflicting of severe bodily or mental pain or suffering is one of the fundamental elements of the crime of torture. The international practice and doctrinal positions of inter alia, Nowak and McArthur also state that intent is generally inferred from the nature of the conduct, the methods used, the circumstances of the act and the pattern of repetition of the acts. It is not necessary for the perpetrator to make a direct admission to prove it

.Reports issued by the United Nations Assistance Mission in Afghanistan (UNAMA), Human Rights Watch (HRW), Amnesty International, and several media freedom organizations indicate that many allegations of torture after August 2021 occurred inside detention facilities controlled by the Taliban, particularly facilities operated by the General Directorate of Intelligence (GDI). Unlike abuse during arrest, detention placed individuals completely under the control of the authorities, making them more vulnerable to physical

and psychological violence and leaving them with very limited access to lawyers, family members, or independent monitoring.[145]

Afghanistan has 40 official prisons and 226 detention facilities, including those for women and children, but not including de facto GDI detention camps, housing almost 23,000 people. The incarceration rate is 54 per 100,000 individuals. 52.2% of these inmates are in pretrial custody. The prison population consists of roughly 1,000 women (4.3%), 800 children (3.5%), and 150 foreign nationals (0.7%). [146]

Detainees in de facto GDI facilities face harsh torture measures, including beatings, electric shocks, waterboarding, and sexual assault, without legal protection. Torture is used to extract confessions, inspire fear, and punish dissent, primarily targeting human rights defenders, women, and activists. Overcrowding, lack of medical treatment, and persistent intimidation create a terrifying environment within these facilities. Torture is particularly prevalent in facilities administered by the de facto GDI. Detainees are often subjected to physical and psychological abuse, sexual violence, and forced confessions. Individuals cited inadequate access to medical care, legal representation, and food, as well as a lack of formal complaint mechanisms.[147]

Despite ratifying the Optional Protocol of the Convention Against Torture (OPCAT), Afghanistan lacks independent supervision of prisons and detention institutions. Furthermore, the de facto authorities have failed to fulfilll their commitments under UNCAT and the ICCPR.They invalidated the 2004 Constitution and abolished crucial oversight

[145] United Nations Assistance Mission in Afghanistan (UNAMA), Treatment of Detainees in Afghanistan, and UNAMA, Human Rights Situation in Afghanistan (2022–2024); Human Rights Watch, World Report 2023: Afghanistan.

[146] OMCT, *Global Torture Index 2025: Afghanistan Factsheet* (2025) 5.

[147] Ibid

institutions. Political parties were banned, as well as the Independent Human Rights Commission and the National Assembly. Non-governmental organizations (NGOs) are strictly controlled, while civil society and the media are severely restricted.However, the de facto authorities have actively undermined the principles and safeguards outlined in these instruments.[148]

In May 2022, the Afghanistan Independent Human Rights Commission (AIHRC), the sole national organization responsible for investigating violations like as torture and ill-treatment, was dissolved. The 2017 Law on the Prohibition of Torture was repealed and replaced with the Decree on Code of Conduct on System Reform Relating to Prisoners (Prison Decree 2022), which provides minimal safeguards for those in jail but does not criminalize torture.[149]

One of the clearest documented examples concerns Mirza Hassani, the owner and director of Radio Aftab in Daikundi Province. In May 2022 he was arrested by Taliban intelligence officers on suspicion of cooperating with the National Resistance Front (NRF). After being transferred to a GDI detention facility in Herat, he later stated that he had been beaten and tortured while in custody. According to media reports, Taliban officials searched his mobile phone, questioned him about his journalistic activities, and detained him without bringing any formal criminal charge.[150]

[148] Ibed

[149] Ibid

[150] Reporters without Borders (RSF), Many Arbitrary Arrests of Journalists in Afghanistan (2022); International Federation of Journalists (IFJ), "Taliban Detains Three Media Workers" (2022); Hasht-e Subh, "Taliban Arrests the Owner of Aftab Radio Station in Daikundi" (29 March 2022).

Another widely reported case involved Khaled Qaderi, a journalist from Herat. He was arrested in March 2022 after publishing criticism of the Taliban on social media and remained in detention before being brought before a Taliban military court. [151]

Reports also describe the treatment of Khan Mohammad Sial, a television journalist in Uruzgan Province. After his arrest in May 2022, local Taliban officials allegedly beat him while demanding that he confess that his media organization was funded by foreign governments and involved in corruption. According to the Committee to Protect Journalists, he remained in prison until such a confession could be obtained.[152]

These individual cases correspond with a much broader pattern identified by international monitoring bodies. [153] The consistency of these findings across different provinces suggests that allegations of abuse inside detention facilities cannot be explained only as isolated misconduct by individual officers.

Former detainees interviewed by international organizations described similar methods of abuse in different detention centres. The reported practices included repeated beatings with cables, plastic pipes, rifle butts and sticks, suspension in painful positions, prolonged blindfolding, threats of execution, sleep deprivation, and repeated interrogations intended to force confessions or obtain information. Several detainees also reported being threatened

[151] International Federation of Journalists, "Afghanistan: Journalist Sentenced to Prison for Criticism of Taliban Regime" (12 May 2022); Committee to Protect Journalists (CPJ), "Afghan Journalist Khalid Qaderi Sentenced to One Year in Prison" (6 May 2022); International Press Institute (IPI), "Afghanistan: Journalist Khalid Qaderi Sentenced to Prison for Criticising Taliban" (10 May 2022).

[152] Committee to Protect Journalists (CPJ), "Taliban Members Beat Journalist at Kabul Checkpoint, Detain Two Others" (22 June 2022); Reporters Without Borders (RSF), Many Arbitrary Arrests of Journalists in Afghanistan (2022).

[153] United Nations Assistance Mission in Afghanistan (UNAMA), Media Freedom in Afghanistan (November 2024), p. 2.

with harm against members of their families if they refused to cooperate.[154]Despite OPCAT ratification, no National Preventive Mechanism (NPM) has ever been established.

Conditions inside detention facilities were themselves another source of concern. Former detainees referred to overcrowded cells, inadequate food and drinking water, lack of medical treatment, poor sanitation, and prolonged incommunicado detention. In several cases, detainees stated that they had no contact with lawyers or relatives for extended periods, increasing the risk of abuse and making independent verification almost impossible.[155]Under Taliban rule, de facto officials are rarely held accountable for abuses. The legal system is primarily based on Sharia, with a strict interpretation of Hanafi jurisprudence. The Prison Decree 2022 references the Quran and Prophet Muhammad's words. Although the Prison Decree 2022 prohibits torture and mistreatment of detainees, it lacks effective accountability mechanisms. The Prison Decree 2022 does not specify the definition of mistreatment, who investigates allegations, or how punishment is enforced. However, it does state that any official who mistreats a prisoner will face punishment and may be dismissed. There is no guidance for starting criminal or administrative investigations. As a result, there are no thorough or transparent investigations into gross human rights violations. Despite preliminary evidence, authorities have failed to investigate and identify perpetrators in numerous cases of enforced disappearances.[156]

Taken together, these reports show a recurring pattern rather than a series of unrelated incidents. Although the Taliban have repeatedly rejected allegations that torture forms part of official policy, the number of documented cases, the similarity of victims' testimonies,

[154] UNAMA, Human Rights Situation in Afghanistan (2022–2024); Human Rights Watch, A Disaster for the Foreseeable Future: Afghanistan under Taliban Rule (2023); Amnesty International, Afghanistan Annual Report (2022–2024).

[155] UNAMA, Treatment of Detainees in Afghanistan; United Nations Special Rapporteur on the Situation of Human Rights in Afghanistan, Reports to the Human Rights Council (2022–2024).

[156] OMCT, *Global Torture Index 2025*

and the consistency of findings published by different international organizations indicate that torture and other forms of ill-treatment remained a serious concern in detention facilities in Afghanistan during the period from 2021 to 2025.

Acts documented were not accidental or careless, but deliberately and purposely inflicted during questioning and custody, as may be established by comparing the information provided with the standards laid out in Article 1 of the Convention against Torture. The fact that the same techniques of torture were used again, that the brutality was increased if the detainees did not participate, and the comments of the interrogators that the victims were made to collaborate or confess, all point to the fact that the pain and suffering caused was the consequence of intentional acts. Therefore, the element of purpose, as one of the criteria of torture under Article 1 of the Convention against Torture, is demonstrated in the documented cases of captives in Taliban custody.

1) Psychological Torture and Intimidation

Under international human rights law, conduct amounts to torture only where the severe pain or suffering is inflicted for one of the specific purposes prohibited by Article 1 of the Convention. Those purposes include obtaining information or a confession, punishing a person for an act he or she has committed or is suspected of having committed, intimidation, coercion, and discrimination. It is sufficient that one such purpose is present, and a single act may serve several purposes simultaneously.

Legal basis for the factor of “prohibited purpose” Under Article 1 of the Convention Against Torture (CAT), the aims of obtaining information or a confession, punishment, intimidation, compulsion and discrimination are listed as necessary aspects of torture. Also,

the international practice and the academic opinion, including Nowak and McArthur, stress that the existence of these aims.[157]

Furthermore, Article 16 of the Convention obliges States to prohibit other acts of cruel, inhuman, or degrading treatment or punishment even where the threshold of torture is not fully established.[158] Importantly, the prohibition of torture has attained the status of a jus cogens norm of international law and constitutes a non-derogable obligation. No public emergency, armed conflict, internal instability, or political circumstance may justify torture or other cruel, inhuman, or degrading treatment. This principle is reflected not only in Article 2(2) of the Convention against Torture but also in Article 4 of the International Covenant on Civil and Political Rights, which excludes torture from permissible derogations during states of emergency. [159] Consequently, every authority exercising effective governmental control including a de facto authority such as the Taliban—is bound to respect this peremptory prohibition.

Beyond physical abuse, credible evidence demonstrates that Taliban authorities have systematically employed psychological torture and intimidation against detainees since their return to power in August 2021. Unlike physical violence, psychological torture aims to inflict severe mental suffering through fear, humiliation, coercion, and prolonged uncertainty. Reports by the United Nations, Amnesty International, Human Rights Watch, and independent investigative organizations consistently document practices including threats of execution, enforced disappearance, prolonged incommunicado detention,

[157] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984, entered into force 26 June 1987, 1465 UNTS 85, art. 1.

[158]Ibid., art. 16.

[159] Convention against Torture, art. 2(2); International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976, 999 UNTS 171, art. 4; Human Rights Committee, General Comment No. 29 (States of Emergency), UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 7.

humiliation, verbal abuse, threats against family members, mock executions, and forced confessions through psychological pressure.[160]

Several documented cases illustrate these practices. In November 2021, Afghan journalist Baktash Ahmadi, a reporter working for Ariana News, was arrested by Taliban intelligence officials and reportedly subjected to repeated threats, intimidation, and prolonged interrogation intended to force him to disclose confidential journalistic sources. During his detention, officials allegedly threatened him with prolonged imprisonment if he continued reporting on sensitive political issues.[161] Similarly journalist Mortaza Behboudi, who was detained by Taliban intelligence for several months in 2023, reportedly endured prolonged solitary confinement, repeated interrogations, uncertainty regarding his fate, and continuous psychological pressure without meaningful access to legal representation or family contact. International observers concluded that the prolonged uncertainty surrounding his detention caused significant mental suffering independent of any physical abuse.[162]

Psychological intimidation has also been directed against women activists. Amnesty International documented the cases of Tamana Zaryab Paryani and Parwana Ibrahimkhel, who were arbitrarily detained after participating in peaceful demonstrations advocating women's rights. During detention they reportedly faced repeated threats of death, threats

[160] United Nations Assistance Mission in Afghanistan (UNAMA), Treatment of Detainees in Afghanistan (2023); Amnesty International, Death in Slow Motion: Women and Girls under Taliban Rule (2023); Human Rights Watch, Afghanistan: Taliban Torture and Abuse in Custody (2022).

[161] Committee to Protect Journalists (CPJ), Afghan Journalist Baktash Ahmadi Detained by Taliban (2021); Human Rights Watch, Afghanistan: Taliban Intensify Media Crackdown (2021).

[162] Reporters Without Borders (RSF), Afghanistan: Journalist Mortaza Behboudi Released after Months of Arbitrary Detention (2024); Amnesty International, Afghanistan Annual Report 2024.

against family members, prolonged isolation, continuous verbal abuse, and coercive interrogations intended to force public confessions and discourage future activism.[163]

The pattern extends beyond isolated incidents. The Afghanistan Human Rights and Democracy Organization interviewed thirty-four former detainees, all of whom reported repeated verbal humiliation and degrading treatment. Victims described being labelled with expressions such as "spy," "apostate," "infidel," "traitor," "prostitute," "American slave," and "Western slave." One detained woman recalled that Taliban officers repeatedly mocked her gender and participation in protests, telling her that a "weak woman" had no right to oppose the regime. Another detainee recounted that interrogators threatened to kill him while simultaneously directing sexually humiliating threats against him.[164] Such conduct was deliberately intended to degrade personal dignity, create fear, and psychologically break detainees before or during interrogation.

Applying these legal standards, the documented conduct of Taliban authorities satisfies several essential elements of psychological torture under international law. First, repeated threats of execution, threats against family members, prolonged incommunicado detention, humiliation, and coercive interrogations intentionally inflict severe mental suffering upon detainees. Second, these acts are carried out for prohibited purposes, including extracting information, obtaining confessions, punishing perceived political opponents, intimidating journalists and activists, and suppressing dissent. Third, the perpetrators act in their official capacity as members of Taliban intelligence services, police forces, or prison authorities exercising governmental functions within Afghanistan.

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[163] Amnesty International, Afghanistan: Taliban Must Immediately Release Women Protesters (2022); Human Rights Watch, Afghanistan: Taliban Arbitrarily Detain Women Activists (2022).

[164] Afghanistan Human Rights and Democracy Organization (AHRDO), The Torture Networks of the Taliban: A Report on the Systematic Use of Torture against Detainees in Afghanistan (2025), pp. 39–42.

The cases of Baktash Ahmadi, Mortaza Behboudi, Tamana Zaryab Paryani, and Parwana Ibrahimkhel demonstrate that psychological abuse was not incidental but formed part of a broader pattern of intimidation directed against journalists, women human rights defenders, and perceived critics of the regime. The consistent use of prolonged isolation, verbal degradation, uncertainty regarding detention, and threats against relatives indicates deliberate methods designed to destroy the psychological resilience of detainees rather than merely maintain prison discipline.

Moreover, even in situations where the severity threshold required under Article 1 of the Convention might not be conclusively established for every individual incident, these practices clearly constitute cruel, inhuman, or degrading treatment prohibited under Article 16. Because the prohibition of torture is a jus cogens norm, no claim based upon national security, religious interpretation, public order, or governmental necessity can legally excuse or justify such conduct.

The evidence further suggests that psychological torture under Taliban rule should not be viewed as isolated misconduct committed by individual officers but rather as part of a systematic pattern of repression. The recurrence of similar methods across different provinces, detention facilities, and categories of victims demonstrates institutional consistency rather than random abuse. International monitoring bodies have repeatedly observed that journalists, women activists, former government officials, ethnic minorities, and civil society members have experienced comparable forms of intimidation and psychological coercion, indicating a broader policy of suppressing dissent through fear.

2) Treatment of Specific Groups

Thus, in international human rights law, article 1 of the Convention against Torture applies solely to torture perpetrated by a public authority or by a person acting in an official

capacity or with the approval or acquiescence of such an authority. This condition differentiates torture from the normal violence by private persons and underlines the link of the conduct perpetrated with the exercise of governmental power.

Article 1 of the Convention against Torture does not limit the criterion of "official authority" to officials of recognized States. As explained in Chapter 2, the Functional Approach grounds the criteria on the actual exercise of governmental functions. In this respect, members of a de facto authority exercising effective control over a territory and a population and carrying out functions such as arrest, interrogation, administration of detention facilities and maintenance of public order are deemed to be acting in an official capacity for the purposes of Article 1. This approach is also compatible with the opinions of Andrew Clapham and Marco Longobardo on human rights duties of de facto authority.

International human rights law prohibits torture and other cruel, inhuman, or degrading treatment without distinction based on political opinion, gender, profession, ethnicity, religion, or any other status. Article 1 of the Convention against Torture expressly includes acts committed for discriminatory purposes among the prohibited purposes of torture.[165] Likewise, Articles 2 and 26 of the International Covenant on Civil and Political Rights guarantee equal protection before the law and prohibit discrimination in the enjoyment of fundamental rights, including the absolute prohibition of torture.[166]

Evidence gathered between 2021 and 2025 demonstrates that torture and other forms of cruel, inhuman, or degrading treatment under Taliban rule have not been applied indiscriminately. Rather, certain groups have faced a substantially higher risk because of

[165] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85 (1984), art. 1.

[166] International Covenant on Civil and Political Rights, 999 UNTS 171 (1966), arts. 2, 7 and 26; Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture), 1992.

their political affiliation, former public service, journalistic work, human rights activities, gender, or ethnic and religious identity. Reports issued by the United Nations, Human Rights Watch, Amnesty International, and the UN Special Rapporteur consistently identify former government officials, former members of the Afghan National Defense and Security Forces (ANDSF), journalists, women activists, human rights defenders, and members of ethnic and religious minorities among those most frequently subjected to arbitrary detention, torture, and intimidation.[167]

One of the most vulnerable categories has been former members of the Afghan National Defense and Security Forces despite the Taliban's announcement of a "general amnesty" in August 2021. UNAMA documented numerous cases in which former military personnel and intelligence officials were arbitrarily arrested, forcibly disappeared, tortured during interrogation, or summarily executed after surrendering.[168] Human Rights Watch likewise concluded that many former security officials remained targets of reprisals notwithstanding public assurances of protection.[169]

Journalists have similarly experienced systematic intimidation and abuse. Following coverage of demonstrations in Kabul in September 2021, journalists Taqi Daryabi and Nematullah Naqdi, both employed by Etilaatroz, were arrested by Taliban intelligence officers and severely beaten while in detention. Photographs released after their release

[167] United Nations Assistance Mission in Afghanistan (UNAMA), Human Rights in Afghanistan: Annual Report 2024; Richard Bennett, UN Special Rapporteur on the Situation of Human Rights in Afghanistan, Report to the Human Rights Council, UN Doc. A/HRC/55/80 (2024); Human Rights Watch, World Report 2025: Afghanistan.

[168] UNAMA, Human Rights in Afghanistan: Treatment of Detainees and Former Government Officials (2023).

[169] Human Rights Watch, Afghanistan: Taliban Kill, Disappear Ex-Security Personnel (2021).

revealed extensive injuries caused by repeated flogging with cables and sticks. They also reported being threatened with death and forced to confess to alleged anti-state activities.[170]

Women human rights defenders have faced comparable patterns of abuse. Tamana Zaryab Paryani, Parwana Ibrahimkhel, and several other women activists were arrested after organizing peaceful protests demanding women's rights. During detention they reportedly endured prolonged incommunicado detention, repeated threats of death, coercive interrogations, verbal humiliation, and intimidation directed against their family members. Amnesty International concluded that these arrests were intended not only to punish individual activists but also to deter wider public participation in women's rights movements. [171] Members of ethnic and religious minorities have likewise reported discriminatory treatment during detention. .[172]

Any deliberate targeting of particular social, political, ethnic, or religious groups for torture or ill-treatment therefore constitutes a particularly serious violation of international human rights law. Applying these legal standards, the documented practices reveal that Taliban authorities have repeatedly targeted specific categories of individuals because of characteristics protected under international law. Former security personnel were reportedly subjected to detention and abuse because of their previous affiliation with the former government. Journalists such as Taqi Daryabi and Nematullah Naqdi were allegedly mistreated because they exercised their professional duty to report on public demonstrations. Women activists including Tamana Zaryab Paryani and Parwana Ibrahimkhel were detained

[170] Human Rights Watch, Afghanistan: Taliban Beat Journalists Covering Protest (September 2021); Committee to Protect Journalists (CPJ), Taliban Detain and Assault Afghan Journalists (2021).

[171] Amnesty International, Afghanistan: Taliban Must Immediately Release Women Protesters (2022); Amnesty International, Death in Slow Motion: Women and Girls under Taliban Rule (2023).

[172] Richard Bennett, UN Special Rapporteur on Afghanistan, Report to the Human Rights Council, UN Doc. A/HRC/55/80 (2024); Office of the High Commissioner for Human Rights (OHCHR), Human Rights Situation in Afghanistan (2024).

in apparent retaliation for peacefully exercising their rights to freedom of expression and peaceful assembly. Members of the Hazara and Shi'a communities reported discriminatory treatment connected to their ethnic and religious identity.

These incidents demonstrate that the alleged mistreatment was not merely incidental to detention but frequently served prohibited purposes recognized under Article 1 of the Convention against Torture, including punishment, intimidation, coercion, and discrimination. Where discriminatory intent accompanies severe physical or psychological suffering intentionally inflicted by officials exercising governmental authority, the conduct falls squarely within the legal definition of torture. Even where individual incidents may not satisfy every constituent element of Article 1, they nevertheless constitute cruel, inhuman, or degrading treatment prohibited under Article 16 of the Convention.

The available evidence indicates that the targeting of specific groups reflects a broader policy of suppressing political opposition and controlling civil society rather than isolated acts committed by individual officers. The recurrence of similar methods against journalists, former government officials, women protesters, and ethnic minorities across multiple provinces demonstrates a consistent pattern of intimidation directed toward groups perceived as challenging Taliban authority.

Consequently, the selective targeting of protected groups strengthens the conclusion that these violations are systematic and engage the international responsibility of those exercising effective governmental authority. The documented evidence demonstrates that former security personnel, journalists, women human rights defenders, civil society activists, and members of ethnic and religious minorities have faced a disproportionate risk of torture and other forms of ill-treatment under Taliban rule between 2021 and 2025.

The documented Taliban conduct was not only a response to the individual actions of the detainees, but in many instances was conducted on account of their political affiliation, profession, gender, or ethnic and religious identity, based on the evidence available and Article 1 of the Convention against Torture and the principle of non-discrimination in international human rights law. The targeting of former security forces, journalists, women's rights defenders, and members of ethnic and religious minorities indicates that the alleged conduct was carried out for purposes such as punishment, intimidation, coercion and discrimination; purposes that are explicitly prohibited under Article 1 of the Convention against Torture. Thus, the existing information suggests that the behavior of the Taliban against these specific populations, if the other requisite conditions are satisfied, can be judged as torture or at least cruel, inhuman or degrading treatment under the definition.

c. Legal Assessment of Taliban Conduct under the Convention against Torture

1) Severe Physical or Mental Pain or Suffering

Torture is prohibited as an absolute norm of international human rights law. It is non-derogable. It applies at all times, even during war, periods of emergency, political instability or to threats to security and no state or authority may cite these conditions as justification of torture.

As described in Chapter 2, Article 2(2) of the Convention against Torture bans any justification of torture on the basis of exceptional circumstances. Article 4 of the International Covenant on Civil and Political Rights likewise recognizes this right as a non-derogable right. Furthermore, the ban of torture under jus cogens is binding on all public authorities, including de facto powers, regardless of their international recognition.

One of the essential elements of torture under international law is the infliction of severe physical or mental pain or suffering. This requirement is expressly stated in Article 1 of the Convention against Torture (CAT), which defines torture as the intentional infliction of severe pain or suffering for a prohibited purpose by, or with the consent or acquiescence of, a public official or another person acting in an official capacity. Likewise, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) prohibits torture and other cruel, inhuman or degrading treatment or punishment. The Human Rights Committee has emphasized that both physical and psychological suffering may fall within the scope of this prohibition depending on the nature and seriousness of the conduct.[173]

International jurisprudence has also clarified that the assessment of severity depends on the circumstances of each case. In Ireland v United Kingdom, the European Court of Human Rights explained that the distinction between torture and other forms of ill-treatment depends largely on the intensity of the suffering inflicted. Similarly, Nowak and McArthur note that severity must be assessed in light of the duration of the abuse, its physical and psychological consequences, and the vulnerability of the victim.[174] Therefore, acts such as severe beatings, electric shocks, waterboarding, suffocation, prolonged threats, and other forms of coercive abuse may satisfy the severity requirement where they cause intense physical pain or serious mental suffering.

The information documented by United Nations bodies and independent human rights organizations between 2021 and 2025 indicates that a number of detainees held by Taliban authorities were subjected to treatment that appears to meet this legal threshold. Reports

[173] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, art. 1; International Covenant on Civil and Political Rights, 1966, art. 7; Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture and Cruel Treatment or Punishment), 10 March 1992, paras. 2–5.

[174] Ireland v United Kingdom (1978) 2 EHRR 25, para. 167; Manfred Nowak and Elizabeth McArthur, The United Nations Convention Against Torture: A Commentary (Oxford University Press 2008) 74–82.

collected by Rawadari describe repeated allegations of severe beatings, waterboarding, electric shocks, suffocation with plastic bags, denial of medical care, and threats of death during detention and interrogation.[175]

For example, one former detainee reported being repeatedly subjected to waterboarding until he lost consciousness, after which interrogators demanded a confession and threatened to kill him if he refused to cooperate. Another detainee described being beaten with cables and chains, subjected to electric shocks, and having two teeth forcibly removed during interrogation. Rawadari also documented cases in which detainees were allegedly suffocated with plastic bags and repeatedly threatened while being accused of cooperating with opposition groups.[176]

Particularly significant are the psychological consequences described by many victims. Several detainees reported constant fear of execution, prolonged intimidation, humiliation, and threats directed against themselves or their family members. International human rights bodies have consistently recognized that severe mental suffering may constitute torture even where visible physical injuries are limited or absent.[177]

Accordingly, the available evidence indicates that the requirement of severe physical or mental pain or suffering, which constitutes the first element of torture under Article 1 of the Convention against Torture, was present in many of the documented cases involving detainees held by Taliban authorities between 2021 and 2025.[178]

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[175] Rawadari, The Cost of Silence: Torture and Ill-Treatment in Taliban Detention Centres (2024) 53–67; OHCHR, The Situation of Human Rights in Afghanistan (2025) para. 29.

[176] Rawadari (n 3) 54 (Interviewee No. 12), 58 (Interviewee No. 18), 61 (Interviewee No. 21), 63 (Interviewee No. 24).

[177] Human Rights Committee, General Comment No. 20 (n 1) paras. 5–6; Convention against Torture, art. 1.

[178] Convention against Torture, art. 1; Nowak and McArthur (n 2) 75–78.

2) Intent Requirement

International human rights standards require torture to be defined as the purposeful infliction of severe bodily or mental anguish or suffering on the victim. Torture is therefore different from injury produced by incompetence, inadequate circumstances of imprisonment or unexpected repercussions. The element of intent guarantees that only action that is deliberately and intentionally designed to compel, punish, intimidate or control others comes within the scope of the ban of torture.

Article 1 of the Convention against Torture requires that severe physical or mental pain or suffering be intentionally inflicted. The element of intent distinguishes torture from suffering resulting from negligence, poor detention conditions, or unintended consequences. It is sufficient that the perpetrator deliberately performs acts that he or she knows will cause severe pain or suffering; the Convention does not require proof that the perpetrator desired suffering for its own sake.[179]

The available evidence indicates that the violence inflicted by Taliban authorities was not accidental or incidental to detention but formed part of deliberate interrogation and punishment practices. Numerous testimonies collected by Rawadari, together with reports issued by UNAMA and OHCHR, demonstrate that physical and psychological abuse was intentionally applied to compel confessions, obtain information, punish detainees, or intimidate them into abandoning political or social activities.[180]

For example, one detainee, referred to here as Mr. Farid, stated that after refusing to confess during interrogation, Taliban officials repeatedly subjected him to waterboarding.

[179] Convention against Torture 1984, art. 1; Manfred Nowak and Elizabeth McArthur, The United Nations Convention Against Torture: A Commentary (Oxford University Press 2008) 79–82.

[180] Rawadari (n 4) 53–67; OHCHR, The Situation of Human Rights in Afghanistan (2025) para 29; UNAMA, Human Rights in Afghanistan (2025).

According to his testimony, each time he regained consciousness, interrogators demanded that he confess, warning that failure to do so would result in his death.[181] The repeated use of the same method after each refusal demonstrates that the suffering inflicted was deliberate and directly linked to the objective of extracting information. Similarly, Ms. Zahra, a woman protester, reported that Taliban members ordered electric shocks after she refused to disclose the password to her mobile phone. Before the abuse began, an interrogator reportedly stated that she was "very resistant" and instructed others to "give her electric shocks."[182]

The sequence of events indicates that the violence was intentionally employed to overcome her resistance rather than resulting from spontaneous misconduct. Intentionality is also evident in cases involving severe beatings and denial of medical care. Ms. Amina, who had sustained injuries during detention, repeatedly requested medical assistance but was deliberately denied treatment despite her deteriorating condition.[183] Likewise, detainees who refused to cooperate reportedly faced escalating methods of torture, including suffocation with plastic bags, repeated beatings, and threats of execution, until interrogators believed that compliance had been achieved.[184]

According to Nowak and McArthur, intent may be inferred from the nature of the conduct, the methods employed, the surrounding circumstances, and the repeated or systematic use of abusive practices during detention or interrogation. Where violence is consciously applied to obtain information, secure confessions, punish, intimidate, or coerce detainees, the requirement of intentionality is fulfilled.[185]

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[181] Rawadari (n 4) 58 (Interviewee No. 18).
[182] Rawadari (n 4) 66 (Interviewee No. 29).
[183] Rawadari (n 4) 54 (Interviewee No. 12).
[184] Rawadari (n 4) 61–63 (Interviewees Nos. 21 and 24).
[185] Nowak and McArthur (n 6) 80–82.

The methods described by former detainees including waterboarding, electric shocks, suffocation with plastic bags, prolonged beatings, and denial of medical treatment required deliberate preparation and conscious execution. These techniques were repeatedly applied after detainees refused to answer questions, disclose information, or confess, demonstrating that the suffering was intentionally inflicted to overcome resistance.

The verbal statements reportedly made by interrogators further reinforce this conclusion. Commands such as "Confess, or you will be killed" or instructions to administer electric shocks after a detainee refused to reveal information illustrate that the violence was closely connected to specific interrogation objectives rather than spontaneous acts of aggression. Moreover, the repetition of similar methods across different detention facilities and against different categories of detainees indicates a consistent pattern of deliberate conduct rather than isolated misconduct by individual officials.

The evidence strongly suggests that intentionality should be assessed not only from individual acts but also from the broader context in which they occurred. The recurrence of identical interrogation techniques, accompanied by explicit demands for confessions or information, demonstrates a calculated use of physical and psychological suffering as an instrument of control. Such consistency substantially weakens any argument that the reported abuse resulted from indiscipline or excessive force by individual officers.

Furthermore, international jurisprudence recognizes that intent is commonly established through objective circumstances rather than direct admissions by perpetrators. In the present context, the systematic use of similar torture methods, repeated warnings issued to detainees, and the close connection between violence and interrogation objectives provide compelling evidence that the suffering was intentionally inflicted within the meaning of Article 1 of the Convention against Torture. The available evidence

demonstrates that the pain and suffering inflicted upon detainees were the foreseeable and intended consequences of deliberate interrogation practices. Accordingly, the requirement of intentionality under Article 1 of the Convention against Torture is satisfied in the documented cases.

3) Prohibited Purpose

International human rights standards require that the infliction of severe bodily or mental pain or suffering be for one or more of the forbidden reasons in order to constitute torture. Such reasons include gaining information or a confession, punishing a person for having committed or being suspected of having committed an offense, threatening or coercing the victim or other individuals, or discriminating against them for whatever reason. The existence of any one of these purposes is sufficient to fulfill the element of a "prohibited purpose" and a single conduct may at one and the same time be in pursuit of numerous prohibited purposes.

According to Nowak and McArthur, the prohibited-purpose requirement distinguishes torture from other unlawful violence because the suffering is deliberately employed as an instrument to achieve a specific objective. International practice further recognizes that such purposes may be established through the surrounding circumstances, including statements made during interrogation, the identity of the victims, and the context in which the abuse occurs.[186] The documented incidents demonstrate that the abuses committed by Taliban authorities correspond closely with the prohibited purposes identified in Article 1 of the Convention. Article 1 of the Convention against Torture requires that severe physical or mental suffering be inflicted for a prohibited purpose. These purposes include obtaining information or a confession, punishment for an actual or suspected act, intimidation or

[186] Nowak and McArthur (n 6) 83–86.

coercion, and discrimination of any kind. The existence of one prohibited purpose is sufficient to satisfy this element of torture; several purposes may also exist simultaneously.[187]

The evidence available between 2021 and 2025 indicates that the violence inflicted upon detainees was consistently connected to identifiable objectives rather than occurring randomly. Former detainees repeatedly reported that physical and psychological abuse intensified whenever they refused to confess, disclose information, identify colleagues, or cease activities regarded by the Taliban as hostile to the regime.[188]

One clear example concerns Mr. Farid, who stated that interrogators repeatedly subjected him to waterboarding while demanding that he confess. After each episode in which he lost consciousness, the interrogators allegedly repeated the same instruction: "Confess, or you will be killed."[189] The torture therefore served the direct purpose of extracting a confession.

Similarly, Ms. Zahra, a woman protester, explained that she was given electric shocks after refusing to disclose the password to her mobile phone. According to her testimony, Taliban members described her as "very resistant" before ordering other officers to administer electric shocks until she cooperated.[190] Journalists were likewise subjected to abuse for purposes extending beyond ordinary detention. Following their arrest while covering public demonstrations in Kabul, journalists Taqi Daryabi and Nematullah Naqdi reported severe beatings during interrogation and pressure to admit that they had

[187] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, art. 1; Manfred Nowak and Elizabeth McArthur, The United Nations Convention Against Torture: A Commentary (Oxford University Press 2008) 82–86.

[188] Rawadari (n 4) 53–67; OHCHR, The Situation of Human Rights in Afghanistan (2025) para 29.

[189] Rawadari (n 4) 58 (Interviewee No. 18).

[190] Rawadari (n 4) 66 (Interviewee No. 29).

participated in activities directed against the Taliban. International organizations concluded that the violence was intended not only to obtain information but also to discourage independent media reporting and intimidate other journalists.[191]

Comparable patterns appear in the detention of women human rights defenders. Tamana Zaryab Paryani and other women activists reportedly endured prolonged detention, repeated threats, coercive interrogations, and intimidation directed at both themselves and their families following peaceful demonstrations demanding women's rights. Amnesty International concluded that these practices sought to punish the activists while simultaneously deterring future protests by others.[192]

According to Nowak and McArthur, the prohibited-purpose requirement distinguishes torture from other unlawful violence because the suffering is deliberately employed as an instrument to achieve a specific objective. International practice further recognizes that such purposes may be established through the surrounding circumstances, including statements made during interrogation, the identity of the victims, and the context in which the abuse occurs.[193] The documented incidents demonstrate that the abuses committed by Taliban authorities correspond closely with the prohibited purposes identified in Article 1 of the Convention.

First, several interrogation methods including waterboarding, electric shocks, and prolonged beatings were directly linked to demands for confessions or disclosure of information. The repeated command to "confess" before and during torture strongly

[191] International Federation of Journalists, Afghanistan under the Taliban; DW, Tough Times under Taliban; UNAMA, UN Releases Report on Human Rights in Afghanistan (20 July 2022); Committee to Protect Journalists, Taliban Forces Beat Samadzai; Committee to Protect Journalists, Three Afghan Journalists Detained Following Coverage of Anti-Taliban Protests (11 January 2022).

[192] Amnesty International, Afghanistan: Taliban Must Immediately Release Women Protesters (2022); Amnesty International, Death in Slow Motion: Women and Girls under Taliban Rule (2023).

[193] Nowak and McArthur (n 6) 83–86.

indicates that the suffering was intentionally inflicted to obtain evidence or admissions from detainees. Second, many victims appear to have been punished because of their professional activities or political opinions. Journalists who reported on anti-Taliban demonstrations, women who participated in peaceful protests, and former government officials were allegedly detained and abused because of conduct perceived as opposition to Taliban authority. In these cases, torture functioned as a form of retaliation rather than a legitimate law-enforcement measure.

Third, intimidation and coercion were evident throughout the documented cases. Threats of execution, violence against family members, prolonged incommunicado detention, and forced confessions were repeatedly used to compel detainees to abandon political activism, disclose information, or refrain from future criticism of the authorities. The reported treatment of journalists further suggests an intention to intimidate the wider media community by creating fear among those engaged in independent reporting. Finally, some documented incidents indicate discriminatory motives. Reports concerning women protesters and members of ethnic and religious minorities suggest that their identity or status contributed to the severity of the treatment they experienced. Such conduct falls squarely within the discriminatory purpose expressly recognized in Article 1 of the Convention.

When considered collectively, the available evidence demonstrates a consistent relationship between torture and identifiable governmental objectives. The victims were not selected at random; rather, they were journalists, women activists, former officials, civil society members, and other individuals perceived as challenging Taliban authority. The recurrence of similar interrogation methods against these groups strongly suggests that torture was employed as a deliberate instrument of governance aimed at obtaining information, suppressing dissent, punishing perceived opponents, and deterring future resistance.

This conclusion is reinforced by the explicit statements reportedly made by interrogators during detention, many of which directly linked the abuse to demands for confessions or compliance. Consequently, the prohibited-purpose element cannot reasonably be regarded as incidental but instead constitutes one of the defining characteristics of the documented conduct.

The available evidence demonstrates that the suffering inflicted upon detainees served identifiable purposes expressly prohibited by Article 1 of the Convention against Torture, including obtaining confessions, punishment, intimidation, coercion, and, in certain cases, discrimination. Accordingly, the prohibited-purpose requirement is satisfied in the documented incidents.

4) Qualification as Torture

International human rights standards demand that all the elements of torture be present at the same time The mere existence of violent conduct or the infliction of pain and suffering is thus not sufficient to characterize an act as torture; it is necessary to demonstrate cumulatively the severity of the pain or suffering, the intentionality of the conduct, the existence of a prohibited purpose and its connection with a person acting in an official capacity. Therefore, while assessing whether action amounts to torture it is necessary to consider all of the legal criteria in the context of international human rights standards, rather than simply the name or description employed by the perpetrators or local authorities for such activity.

As stated in Article 1 of the Convention against Torture, all the elements of torture must occur at the same time, as discussed in Chapter 2. Treatment is torture only if all of the following are present together: significant pain or suffering, purposeful action, banned purpose and official capacity.

The assessment of reported practices attributed to the Taliban authorities between 2021 and 2025 indicates that many of the documented acts satisfy the legal elements of torture contained in Article 1 of the Convention against Torture. Reports issued by UNAMA, OHCHR, and independent human rights organizations describe repeated incidents involving severe physical violence, prolonged beatings, electric shocks, waterboarding, suspension from ceilings, threats of death, forced confessions, and other forms of physical and psychological abuse inflicted upon detainees. These acts were capable of causing severe physical pain as well as profound mental suffering.[194] The available evidence further suggests that such conduct was not accidental or incidental. In many documented cases, the treatment was allegedly used during arrest, interrogation, detention, or punishment and was intended to obtain confessions, extract information, intimidate victims, suppress dissent, or punish individuals perceived as opponents of the de facto authorities.[195]

In addition, a significant number of allegations concern conduct carried out by members of intelligence services, police personnel, prison officials, or other actors exercising governmental authority within institutions controlled by the Taliban administration. Although the Taliban remain a de facto authority, they exercise effective control over state institutions, detention facilities, and security structures throughout most of Afghanistan.

These objectives correspond closely with the prohibited purposes expressly identified in Article 1 of the Convention.[196] Consequently, the requirement that torture be committed by, at the instigation of, or with the consent or acquiescence of a person acting in an official

[194]UNAMA, The Treatment of Detainees in Afghanistan (September 2023); Rawadari, Torture and Ill-Treatment: The State of Prisons in Taliban-Controlled Afghanistan (June 2025).

[195]Rawadari (n 1) 16–40.

[196]Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, art 1. See also OHCHR, The Situation of Human Rights in Afghanistan (2025) paras 11–13, 29, 56–58; Andrew Clapham, Human Rights Obligations of Non-State Actors (Oxford University Press 2006) 275–279.

capacity may be considered fulfilled in relation to many of the reported incidents. Viewed collectively, the factual patterns documented by international monitoring bodies reveal conduct that extends beyond isolated acts of ill-treatment and, in numerous instances, appears to meet the legal threshold established under Article 1 of the Convention against Torture.[197]

5) Violation of the Absolute and Non-Derogable Prohibition of Torture

The prohibition of torture is an absolute and non-derogable right recognized under international human rights standards that applies at all times and in all circumstances. Torture or other cruel, inhuman or degrading treatment or punishment may never be justified in this respect by reference to extraordinary circumstances, such as war, a state of emergency, political instability, the battle against terrorism or the preservation of national security. This concept is founded on the safeguarding of the intrinsic dignity of the human person and is binding on all authorities and institutions exercising public power, whether recognized or de-facto authorities.

As already mentioned in Chapter Two, Article 2(2) of the Convention against Torture specifies that no exceptional circumstances may be cited as a justification of torture including the existence of a state of war or a danger of war, internal political instability or any other public emergency. Furthermore, the prohibition of torture is a non-derogable right under Article 4 of the International Covenant on Civil and Political Rights and no departure from it is allowed, even in situations of public emergency. Moreover, the practice of international institutions and international tribunals has recognized the prohibition of torture

[197]Rome Statute of the International Criminal Court, arts 25 and 28; Antonio Cassese, International Criminal Law (2nd edn, Oxford University Press 2008) 147–149.

as one of the peremptory norms (jus cogens) of international law, obligatory on all authorities exercising authority, including de facto powers.

The incidents discussed in the previous sections indicate that allegations of torture and other forms of ill-treatment in Afghanistan after August 2021 are not merely questions of unlawful conduct under domestic law. They must also be examined in light of one of the most fundamental principles of international human rights law: the absolute prohibition of torture. Reports published by UNAMA, the Special Rapporteur on Afghanistan, Human Rights Watch, Amnesty International and other organizations consistently describe allegations of severe physical abuse, psychological intimidation, forced confessions, arbitrary detention, and violence against journalists, former government officials, protesters, and other detainees.[198]

When these legal principles are applied to the situation in Afghanistan, no legal basis exists for excusing or limiting the prohibition of torture. Since August 2021, the Taliban have repeatedly stated that certain arrests, interrogations, and restrictions were necessary to maintain public order or national security. However, international law does not recognize such arguments as valid defences where torture or cruel, inhuman, or degrading treatment is involved. Even if security concerns exist, the prohibition of torture remains fully applicable.[199]

The documented cases discussed earlier including the alleged beating of journalists during detention, coercive interrogations, threats against family members, forced confessions, and other forms of physical and psychological abuse must therefore be assessed

[198] UNAMA, Human Rights Situation in Afghanistan (2022–2025); UNAMA, Media Freedom in Afghanistan (November 2024); Human Rights Watch, World Report 2023; Amnesty International, Annual Report 2023/24.

[199] Convention against Torture, Article 2(2); Human Rights Committee, General Comment No. 29 (States of Emergency), para. 7.

against this strict legal standard. If these allegations are established, they cannot be justified by reference to emergency measures, counter-insurgency operations, or the exercise of governmental authority.

Their legal significance lies precisely in the fact that they violate a rule from which international law permits no exception.[200] For this reason, the prohibition of torture occupies a unique position within international law. It protects the inherent dignity of every human being and limits the exercise of public power even during periods of armed conflict, political instability, or changes in government. In the context of Afghanistan between 2021 and 2025, the available reports therefore raise concerns not only about individual incidents of abuse but also about possible violations of one of the most fundamental and universally binding norms of the contemporary international legal order.

3.2. Taliban Members Exercising Governmental Functions as Persons Acting in an Official Capacity

a. The Taliban as a De Facto Authority Exercising Governmental Functions

International International human rights legislation rests on the notion that human rights duties derive not only from the formal recognition of a State, but also from the effective exercise of governmental power over a territory and its inhabitants. Whenever an authority has effective control over a region and its population and executes governmental responsibilities, such authority must protect the basic rights and freedoms of people over whom it presides. This strategy is aimed to guarantee that successful protection of human rights does not depend on the political status or international recognition of the ruling power.

[200] UNAMA, Human Rights Situation in Afghanistan (2022–2025); UN Special Rapporteur on the Situation of Human Rights in Afghanistan, Reports to the Human Rights Council (2022–2025).

The legal foundation for assessing effective control and the execution of governmental tasks is included in the key international human rights agreements and in their authoritative interpretations. Article 2(1) ICCPR, read in the light of General Comment No. 31 of the Human Rights Committee, shows that the obligation to respect and ensure human rights is linked to the actual exercise of public authority and competence, not simply to the formal recognition of a State. Similarly, the Convention against Torture (CAT) Articles 1, 2 and 16 ban torture and require States to prevent acts by anyone operating in an official capacity or under public authority. Thus, if an authority is in effective control of a territory and a people, its conduct is not only a political truth from the point of view of international human rights law, but also the legal ground for assessing the obligations and responsibilities of that authority.[201] For this reason, several scholars have argued that the existence of effective control cannot be ignored when assessing responsibility for alleged human rights violations committed within territories administered by de facto authorities. [202]

Following the collapse of the Islamic Republic of Afghanistan in August 2021, the Taliban assumed control over Kabul and rapidly extended their authority across the entire territory of Afghanistan. Unlike the period of armed conflict that preceded their return to power, the Taliban after August 2021 were no longer operating merely as an insurgent movement challenging the government. Instead, they became the authority exercising day-to-day control over governmental institutions, public administration, security structures, border crossings, detention facilities, and judicial mechanisms throughout the country.[203]

[201]Andrew Clapham, Human Rights Obligations of Non-State Actors (Oxford University Press 2006) 271–276; Antonio Coco and Talita de Souza Dias, 'Cyber Due Diligence: A Patchwork of Protective Obligations in International Law' (2021) 32 European Journal of International Law 771.

[202]Andrew Clapham, Human Rights Obligations of Non-State Actors (Oxford University Press 2006) 271–276.

[203]UNAMA, Human Rights in Afghanistan: 15 August 2021–15 June 2022 (July 2022) 4–6.

From a factual perspective, the Taliban established control over the principal elements normally associated with governmental authority. They assumed responsibility for law enforcement, appointed provincial and district officials, administered detention centres, collected revenues, supervised border management, and issued regulations affecting the daily lives of the population.[204]

International organizations and monitoring bodies have repeatedly noted that Taliban authorities exercise effective control throughout most parts of Afghanistan and remain the primary actors responsible for the administration of public affairs.[205]

In the Afghan context, the relevance of this discussion arises from the reality that the Taliban have exercised extensive governmental functions since 2021 and have maintained authority over institutions directly affecting the lives, liberty, and security of millions of people across the country.[206]

Following the collapse of the former Afghan government in August 2021, the Taliban assumed responsibility for a broad range of governmental activities throughout Afghanistan. Reports issued by the United Nations indicate that Taliban authorities established administrative structures at national and provincial levels, appointed governors and district officials, supervised security institutions, and exercised authority over detention facilities and law enforcement bodies.[207] In practice, governmental decisions affecting the daily lives of the population were implemented through institutions operating under Taliban direction and control. particularly relevant for the purposes of the Convention against Torture is the Taliban's

[204]United Nations Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan, UN Doc A/HRC/51/6 (2022) paras 9–15.

[205]UNAMA (n 4) 5–8.

[206]Antonio Coco and Talita de Souza Dias, 'Due Diligence and De Facto Regimes' (2020) 9 Cambridge International Law Journal 77, 80–82.

[207]United Nations Assistance Mission in Afghanistan, Human Rights in Afghanistan Reports (2022–2025). See also Michael Schoiswohl, 'De Facto Regimes and Human Rights Obligations — The Twilight Zone of Public International Law?' (2001) 6 Austrian Review of International and European Law 45.

administration of policing, intelligence, and detention systems. The Ministry of Interior, provincial police commands, intelligence authorities, and prison administrations functioned under Taliban-appointed officials.[208]

Individuals arrested, detained, interrogated, or punished after August 2021 were therefore generally subject to institutions operating under the authority of the Taliban administration rather than private actors acting independently.[209] The exercise of judicial functions also demonstrates the extent of Taliban governance. Various reports document the operation of courts applying the Taliban's interpretation of Islamic law and the implementation of judicial decisions by Taliban officials and security personnel.[210]

The importance of effective control becomes particularly visible in the field of human rights protection. Where an authority possesses the ability to arrest persons, operate detention facilities, conduct investigations, impose punishments, and regulate public behaviour, its actions inevitably affect the enjoyment of fundamental rights and freedoms.[211]

An examination of the facts in light of the aforementioned legal framework shows that since August 2021, the Taliban have not only exercised effective control over the territory and population of Afghanistan, but have also continuously assumed governmental functions through the management of executive, security, law enforcement and judicial institutions. Therefore, their actions cannot be assessed solely within the framework of the activities of a mere non-state armed group, but must be examined as the actions of an authority vested with public authority. This situation is of particular importance from the perspective of Article 1 of

[208]UNAMA, Human Rights in Afghanistan: Treatment of Detainees (various reports, 2022–2025).

[209]Andrew Clapham (n 1) 278.

[210]Office of the United Nations High Commissioner for Human Rights, Human Rights Situation in Afghanistan (2022–2025).

[211]James Crawford, The Creation of States in International Law (2nd edn, Oxford University Press 2006) 55–57. See also Michael Schoiswohl, 'De Facto Regimes and Human Rights Obligations — The Twilight Zone of Public International Law?' (2001) 6 Austrian Review of International and European Law 45.

the Convention against Torture, because one of the essential elements of the realization of torture is its commission by a public official or a person acting in an official capacity. Therefore, the actions of officials, security forces, officials of detention centers and other officials who perform governmental functions under the authority of the Taliban can be assessed from a legal perspective within the framework of the concept of official capacity; an issue that provides the basis for examining the realization of the legal elements of torture and the resulting liability in the subsequent sections of this chapter.

b. Legal Implications of the Taliban's De Facto Status for Torture Obligations

The question of whether the Taliban enjoys international recognition as the lawful government of Afghanistan remains politically contested. Nevertheless, from the perspective of the prohibition of torture, the legal significance of recognition is often less important than the reality of authority exercised on the ground. International human rights law developed primarily within a state-centred framework, yet modern practice increasingly acknowledges that the protection of individuals cannot depend entirely upon questions of diplomatic recognition.[212] Since August 2021, the Taliban has exercised authority over virtually all major governmental institutions in Afghanistan, including law-enforcement bodies, intelligence agencies, detention facilities, and judicial structures.[213]

As a result, individuals who come into contact with these institutions do not interact with a private armed group in the ordinary sense. Rather, they encounter officials exercising powers that directly affect liberty, security, and physical integrity.[214] In practical terms, the

[212]Andrew Clapham, Human Rights Obligations of Non-State Actors (Oxford University Press 2006) 271–276.

[213]UNAMA, Human Rights in Afghanistan Reports (2022–2025).

[214]Nigel S Rodley and Matt Pollard, The Treatment of Prisoners under International Law (3rd edn, Oxford University Press 2009) 82–89.

risk of torture arises not from the formal legal status of the authority, but from its capacity to arrest, detain, interrogate, and punish individuals under its control.

A number of scholars have argued that limiting the application of anti-torture standards solely to internationally recognized governments would create a serious protection gap.[215] Such an approach would mean that populations living under the control of de facto authorities could find themselves outside the effective protection of one of the most fundamental norms of international law. For this reason, contemporary legal scholarship increasingly focuses on the exercise of public power rather than recognition alone when assessing responsibility for human rights violations.[216]

The Convention against Torture was adopted to protect individuals from abuses committed through the exercise of authority and coercive power.[217] The object and purpose of the Convention would be difficult to achieve if entities exercising extensive control over territory, detention facilities, and security institutions could avoid scrutiny merely because their governmental status remains disputed. This concern becomes particularly relevant in situations where an authority performs functions normally associated with government while simultaneously exercising direct control over persons deprived of their liberty.

The relevance of the Taliban's de facto status therefore lies in its ability to place individuals under its authority and to operate institutions through which torture or ill-treatment may occur. Whether particular conduct satisfies the legal elements of torture under Article 1 of the Convention requires a separate assessment. However, the existence of a de

[215]Michael Schoiswohl, 'De Facto Regimes and Human Rights Obligations — The Twilight Zone of Public International Law?' (2001) 6 Austrian Review of International and European Law 45.

[216]Michael Schoiswohl, 'De Facto Regimes and Human Rights Obligations — The Twilight Zone of Public International Law?' (2001) 6 Austrian Review of International and European Law 45.

[217]Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Preamble. See also Manfred Nowak and Elizabeth McArthur, The United Nations Convention Against Torture: A Commentary (Oxford University Press 2008) 74–82.

facto authority exercising governmental functions provides the factual context within which those legal elements must be examined.[218]

c. Official Capacity

One of the essential elements of torture under Article 1 of the Convention against Torture (CAT) is that the prohibited conduct must be committed by, at the instigation of, or with the consent or acquiescence of a public official or another person acting in an official capacity. This requirement is important because the Convention was designed to address abuses connected to the exercise of public power rather than ordinary acts of violence committed by private individuals. Accordingly, not every assault, threat, or act of coercion constitutes torture under international law. For conduct to fall within Article 1 CAT, a sufficient link must exist between the abuse and the exercise of public authority.[219]

The meaning of the phrase "official capacity" has gradually evolved in international legal practice. Traditionally, the concept was associated with officials of a recognized state acting within formal governmental institutions. However, developments in international human rights law have shown that a strictly formal approach may leave significant gaps in protection, particularly in situations where effective power is exercised by authorities that do not enjoy full international recognition. As a result, many scholars and international bodies have increasingly adopted a functional approach that focuses on the actual exercise of governmental authority rather than formal legal status alone.[220]

Under this functional understanding, the decisive question is not whether an actor is internationally recognized as a lawful government official, but whether that actor exercises

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[218]Antonio Coco and Talita de Souza Dias, 'Due Diligence and De Facto Regimes' (2020) 9 Cambridge International Law Journal 77, 80–82.

[219] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, art. 1.

[220] Manfred Nowak and Elizabeth McArthur, The United Nations Convention Against Torture: A Commentary (Oxford University Press 2008) 82–86.

powers normally associated with public authority. Such powers may include policing, intelligence gathering, detention, criminal investigation, adjudication, prison administration, or the maintenance of public order. Where individuals perform these functions and exercise control over persons deprived of liberty, they may be regarded as acting in an official capacity for the purposes of Article 1 CAT.[221]

This interpretation is particularly relevant in situations involving de facto authorities. As discussed earlier, a de facto authority may not possess full international recognition, yet still exercise effective control over territory, population, institutions, and security structures. Andrew Clapham argues that where non-state actors assume governmental functions and exercise powers traditionally reserved for the state, international human rights obligations cannot simply disappear because of questions relating to formal recognition. The focus should instead be placed on the reality of authority and control.[222] Similar views have been advanced by Marco Longobardo and other scholars who emphasize that the exercise of public power may generate legal responsibilities even where the governing entity lacks formal international status.[223]

The wording of Article 1 CAT itself supports such an interpretation. The Convention does not limit responsibility exclusively to officials of recognized governments. Instead, it refers more broadly to "a public official or other person acting in an official capacity." The inclusion of the latter phrase suggests that the drafters intended to capture situations in which authority is exercised in practice, regardless of the precise constitutional or international

[221] Ibid 83–85.

[222] Andrew Clapham, Human Rights Obligations of Non-State Actors (Oxford University Press 2006) 275–310.

[223] Marco Longobardo, The Use of Armed Force by States in Territories under Foreign Control (Cambridge University Press 2018) 56–61; Marco Pertile and Seline Trevisanut, 'De Facto Regimes and Human Rights Obligations' (2019) 28 Minnesota Journal of International Law 1–18.

status of the actor concerned.[224] Furthermore, the Convention extends responsibility not only to direct perpetrators but also to situations where torture occurs with the consent or acquiescence of authorities. This reflects the understanding that torture often takes place within institutional environments where superiors tolerate, encourage, or fail to prevent abusive conduct.[225]

The situation in Afghanistan after August 2021 illustrates the practical importance of this approach. Following the collapse of the former government, the Taliban assumed effective control over state institutions throughout most of the country. They took control of ministries, police structures, intelligence agencies, detention facilities, provincial administrations, and courts. Although the Taliban administration has not obtained widespread international recognition as the lawful government of Afghanistan, it nevertheless performs many functions ordinarily exercised by a state.[226]

Reports published by UNAMA, OHCHR, and other human rights organizations indicate that many allegations of torture and ill-treatment arose in facilities operated by the General Directorate of Intelligence (GDI), police authorities, and detention centres functioning under Taliban control. Victims frequently reported being arrested by Taliban security personnel, transferred to official places of detention, interrogated by intelligence officers, and subjected to coercive treatment while in custody.[227] These allegations are significant because they do not concern private acts of violence occurring outside institutional structures. Rather, they involve conduct allegedly committed by individuals

[224] Convention against Torture, art. 1.
[225] Nowak and McArthur (n 2) 87–90.
[226] UNAMA, Human Rights in Afghanistan: February–April 2025 (2025); OHCHR, The Situation of Human Rights in Afghanistan (2025).
[227] Rawadari, The Cost of Silence: Torture and Ill-Treatment in Taliban Detention Centres (2024) 53–67; UNAMA (n 8).

exercising public authority through organs responsible for law enforcement, detention, and security.

The relevance of official capacity becomes even clearer when viewed together with the concept of effective control. Individuals who operate detention facilities, conduct interrogations, issue arrest orders, or supervise security institutions exercise authority that directly affects the rights and freedoms of others. Whether or not such individuals are internationally recognized as officials of a lawful government, they exercise powers that are governmental in nature. For this reason, many contemporary interpretations of Article 1 CAT focus on the practical exercise of authority rather than formal questions of recognition.[228]

Applying these principles to the available evidence, the official-capacity requirement appears to be satisfied in many of the documented cases between 2021 and 2025. The alleged acts occurred during arrests, interrogations, and detention procedures conducted by members of institutions operating under Taliban authority. The individuals accused of committing such acts were not acting as private persons pursuing personal objectives, but as members of security, intelligence, or detention structures exercising governmental functions. Consequently, the connection between the alleged conduct and the exercise of public authority is sufficiently strong to meet the requirement of official capacity contained in Article 1 of the Convention against Torture.[229]

d. Accountability for Torture under the Convention against Torture

[228] Clapham (n 4) 299–305; Longobardo (n 5) 56–61.
[229] Convention against Torture, art. 1; UNAMA (n 8); OHCHR (n 8).

1) Legal Basis for Accountability of Individuals under the Convention against Torture"

In addition to the general principles of individual criminal responsibility under international criminal law, the Convention against Torture establishes several obligations that are directly relevant to the accountability of individuals involved in acts of torture. Article 2(3) provides that an order from a superior officer or a public authority may not be invoked as a justification for torture. This provision makes clear that the existence of a hierarchical relationship does not remove the personal character of responsibility for acts of torture. Accordingly, an individual cannot rely solely on the fact that the conduct was carried out pursuant to instructions from a superior authority.

Article 4 further strengthens this framework by requiring States Parties to ensure that acts of torture, attempts to commit torture, and acts constituting complicity or participation in torture are offences under their criminal law. The provision therefore extends beyond the person who directly inflicts the physical or mental suffering and requires States to address different forms of participation in the commission of torture. In this respect, ordering, assisting, or otherwise participating in torture may give rise to criminal responsibility where the applicable legal requirements are established.[230]

Articles 5 and 7 of the Convention provide an additional framework for preventing impunity. Article 5 requires States Parties to establish jurisdiction over the offences referred to in Article 4 in the circumstances specified by the Convention. Article 7 further requires the State in whose territory an alleged offender is found, where the conditions of the Convention are met, to submit the case to its competent authorities for prosecution if it does not extradite that person. The Committee against Torture has emphasized that this obligation is intended to ensure that persons suspected of torture do not escape accountability merely by being present outside the State in which the alleged conduct occurred.[231]

Taken together, Articles 2(3), 4, 5 and 7 demonstrate that the Convention against Torture is concerned not only with the prohibition and prevention of torture but also with the legal accountability of persons involved in its commission. These provisions are therefore

[230] United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Article 4(1).

[231] United Nations Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Article 7, CAT/C/CR/34/3, paras.

relevant to the assessment of individual responsibility where members or officials of a de facto authority are alleged to have committed, ordered, assisted, or participated in acts falling within the definition of torture. In the context of Afghanistan, they provide an important legal framework for examining the potential responsibility of Taliban members and officials for alleged acts of torture and other cruel, inhuman, or degrading treatment or punishment, while the determination of individual responsibility remains dependent on the facts and evidence relating to each person.[232]

As Afghanistan remains a State Party to the Convention Against Torture (CAT), the change of government in 2021 did not result in the abrogation or transfer of obligations arising from this Convention, and these obligations remain in force. The Taliban, as the de facto governing authority in Afghanistan, were also obliged to comply with these obligations due to their effective control over the territory, population and government institutions. However, the evidence reviewed in this research shows that the Taliban have not only not considered themselves bound by the standards of the Convention, but have also in numerous cases committed acts through institutions and agents under their control that could constitute torture or other forms of cruel, inhuman or degrading treatment or punishment. Therefore, the lack of international recognition or non-acceptance of obligations by the Taliban cannot exempt them from responsibility arising from violations of the absolute prohibition of torture.

2) Accountability Mechanisms and Enforcement Challenges

Universal jurisdiction is an important mechanism through which certain serious international crimes may be investigated and prosecuted regardless of where they were committed or the nationality of the perpetrators and victims. The doctrine is based on the idea that some violations, including torture, are so serious that they affect the international community as a whole and therefore justify prosecution by any state possessing the necessary legal framework.[233]

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[232] United Nations Committee against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, CAT/C/GC/2, 24 January 2008, paras. 1, 5؛ Convention against Torture, Articles 2(3), 4, 5 and 7.

[233] Antonio Cassese, International Criminal Law (2nd edn, Oxford University Press 2008) 335–337.

In contemporary international practice, many States allow the exercise of universal jurisdiction over genocide, crimes against humanity, war crimes and torture. According to a survey cited in the Handbook, 76 per cent of States provide for universal jurisdiction over one or more of these crimes. Universal jurisdiction enables States to prosecute such crimes regardless of where they were committed and may provide a mechanism for accountability where domestic authorities are unable or unwilling to act.[234]

The Convention against Torture reflects this principle by requiring States Parties to establish jurisdiction over alleged torturers found within their territory when they do not extradite them to another competent state for prosecution.[235] This obligation seeks to prevent perpetrators of torture from finding safe havens and escaping accountability simply by crossing international borders. In practice, several states have incorporated universal jurisdiction provisions into their domestic legislation and have used them to investigate international crimes committed outside their territories.[236]

A landmark example of the practical application of universal jurisdiction is the Pinochet case. In 1998, Augusto Pinochet was arrested in London for his role in killings committed during his rule as Chile's Head of Military Government. The arrest was justified on the basis of the principle of universal jurisdiction. The case is regarded as an early landmark example of universal jurisdiction and demonstrates that the doctrine can be applied in practice to address serious international crimes where domestic accountability is unavailable. The case also involved judicial discussion concerning the issue of immunities.[237]

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[234] Ham Diley Campaign, *Handbook on Universal Jurisdiction: Holding the Taliban Accountable for International Crimes* (Australia, 2024).

[235]Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, arts 5–7.

[236]Malcolm N Shaw, International Law (8th edn, Cambridge University Press 2017) 690–692.

[237] Ham Diley Campaign, *Handbook on Universal Jurisdiction: Holding the Taliban Accountable for International Crimes*.

In the Afghanistan context, universal jurisdiction may provide an alternative avenue for accountability where domestic remedies are unavailable and international mechanisms face practical or political limitations. If individuals allegedly responsible for torture travel to states whose legal systems permit the exercise of universal jurisdiction, national authorities may, subject to their domestic laws and evidentiary requirements, initiate criminal investigations or prosecutions.

From a legal point of view, universal jurisdiction might partially fill the vacuum created by the ineffectiveness of domestic procedures and the restrictions of some international processes. This concept, in the instance of Afghanistan, authorizes national courts in other countries to investigate or punish individuals, if the legal prerequisites are satisfied, given the numerous claims of torture and the difficulties of attaining meaningful accountability domestically. But the introduction of universal jurisdiction is neither absolute nor automatic, but depends on the fulfillment of conditions such as the provision of this jurisdiction in the domestic laws of states, the existence of sufficient evidence, the presence of the accused in the territory of the prosecuting state and the will of national authorities to initiate proceedings. Thus, even if universal jurisdiction is not a substitute for domestic or international accountability mechanisms, it can play an effective role as a complementary mechanism in reducing impunity and strengthening the implementation of international obligations of states against the crime of torture.

CHAPTER IV

CONCLUSION

4.1. Conclusion

The findings of this study show that a significant number of acts committed during the Taliban's rule in Afghanistan between 2021 and 2025, including arbitrary detention, coercive interrogation, severe beatings, threats, forced confessions, and corporal punishment, may meet the legal elements of torture under Article 1 of the Convention against Torture (CAT). In some cases, these acts may also fall under cruel, inhuman, or degrading treatment or punishment under Article 16 of the Convention. The available evidence indicates that some of these acts were carried out intentionally for purposes such as punishment, intimidation, suppressing opponents, and obtaining information or confessions. These findings support the Human Dignity Theory because such practices are inconsistent with the inherent dignity of human beings and demonstrate a clear conflict with the basic values protected by this theory.

The study also shows that since August 2021, the Taliban have exercised effective control over Afghanistan's territory, population, security institutions, detention centers, and judicial structures. Therefore, Taliban members and officials who perform governmental functions may fall within the concept of "persons acting in an official capacity" under Article 1 of the Convention against Torture, despite the lack of full international recognition of the Taliban government. In addition, Articles 2, 4, 5, and 7 of the Convention provide a legal framework for the prohibition and criminalization of torture, as well as jurisdiction, prosecution, and extradition of alleged perpetrators. In particular, Article 5 can, under certain conditions, provide a basis for exercising criminal jurisdiction, including universal jurisdiction, over persons suspected of torture. Article 7 also requires States to prosecute or extradite suspects and therefore helps prevent impunity.Universal jurisdiction is also important from the

perspective of Human Dignity Theory because it aims to protect victims and respect the inherent dignity of every person. It can prevent alleged perpetrators of torture from avoiding accountability simply because effective domestic proceedings are unavailable. Therefore, the Convention against Torture not only prohibits torture but also provides legal mechanisms to protect human dignity, ensure accountability, and prevent impunity for those responsible for torture.

4.2. Recommendations

Based on the findings of this study, States Parties to the Convention against Torture are recommended to use the jurisdictional framework provided under Articles 5 and 7 of the Convention. Where appropriate, they should also apply the principle of universal jurisdiction to investigate, prosecute, or extradite persons suspected of committing acts of torture in Afghanistan in order to prevent impunity

The Committee against Torture, the United Nations Assistance Mission in Afghanistan (UNAMA), and other United Nations human rights mechanisms are also recommended to strengthen monitoring of detention centers, interrogation practices, and corporal punishments in Afghanistan. They should also continue documenting, collecting, and preserving evidence related to torture and other forms of cruel, inhuman, or degrading treatment or punishment.

Finally, future researchers are encouraged to further examine the application of Article 1 of the Convention against Torture to de facto authorities and the legal status of individuals who perform governmental functions without formal international recognition. Such research can contribute to the development of international legal literature on responsibility for human rights violations and the implementation of the Convention against Torture.

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